TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 97.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY, APPELLANTS,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS OF THOMAS A. MORRISON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 11, 1880.

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1 *Petition of appeal.*

United States Supreme Court.

BETWEEN THE INHABITANTS OF THE TOWNship of Bernards, in the county of Somerset, appellants, *and* THOMAS H. MORRISON AND GARDNER S. Hutchinson, su'vivors of Thomas A. Morrison, appellees.	On bill, &c.

To the honorable the Supreme Court of the United States:

The appeal of the Inhabitants of the Township of Bernards, in the county of Somerset, defendants and appellants, respectfully showeth:

That upon the eighth day of May, eighteen hundred and seventy-six, the complainants filed their bill of complaint in the circuit court of the United States for the district of New Jersey against the above-named defendants and appellants, and in said bill of complaint, after setting
2 up the parties complainants and defendants, alleged that on the 29th day of March, 1865, the legislature of the State of New Jersey passed an act chartering the Passaic Valley and Peapack Railroad Company, authorizing said company to lay out and construct a railroad from some point in the county of Union or the county of Essex and passing through the township of Springfield, in the county of Union, into the township of New Providence, and up the Passaic Valley at or near Baskinridge, in the township of Bernards, in the county of Somerset; that the incorporators therein named subsequently opened books and received subscriptions for the stock, and that the subscribers organized themselves into an incorporation by electing a board of directors; that the said corporation caused to be surveyed and located the route of said railroad, commencing at a point in the county of Union and running up the valley of the Passaic and through the township of Bernards; that on the 9th day of April, 1868, the legislature of said State passed an act entitled "An act to authorize certain township' in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and
3 Peapack Railroad Company;" that pursuant to the last-recited act twelve or more freeholders of the township of Bernards, in the county of Somerset, made application to the circuit court of said county for the appointment of three freeholders, residents of the said township, to carry into effect the purposes and provisions of the said act, and that John H. Anderson, Oliver R. Stelle, and John Guerin were duly appointed; that said commissioners entered into a bond to the said township, with approved sureties, for the faithful discharge of their duties, which bond was deposited with the cler'. of the township; that the commissioners in the month of December, 1868, filed in the clerk's office of the county of Somerset three paper writings annexed to each other, purporting to be signed by divers tax-payers of the township of Bernards, to which were attached affidavits verifying the same, and certifying that the persons so signing were a majority of the tax-payers of the township and

represented a majority of the landed property appearing upon the last assessment-roll of said township for the year 1867, and that the purport of said paper writings so signed and filed was
4 that the persons signing the same thereby consented that the said commissioners might, under the provisions of the law, borrow on the faith and credit of the township and execute bonds for one hundred and thirty thousand dollars, which money was to be invested in the stock of the Passaic Valley and Peapack Railroad Company, and that the commissioners might exercise full and complete power for the township to carry into effect the purposes and provisions of the said act; that a certified copy of said consent, under the hand and seal of the county clerk, was afterwards filed with the clerk of the township of Bernards; that on the first day of September, 1869, the said commissioners caused to be filed in the office of the clerk of the county of Somerset, three other paper writings of the same tenor and effect as those last mentioned, except that the amount of bonds to be issued was limited to one hundred and twenty-seven thousand dollars, the same being certified and authenticated as aforesaid, and a copy thereof duly filed with the clerk of said township; that afterwards and before January 1st, 1870, the said commissioners, acting
5 in pursuance of the authority of the said consent-papers, subscribed for 2,540 shares of the par value of fifty dollars each of the capital stock of the said railroad company, the same to be paid in instalments as called for by the directors, the par value of which amounted to one hundred and twenty-seven thousand dollars, which sum did not exceed ten per cent. of value of the real estate of said township as it appeared upon the assessment-roll for 1867; and that about the 1st of January, 1869, they caused to be prepared divers bonds of the denominations of $1,000, $500, and $100 each, respectively, and amounting in the aggregate to the sum of one hundred and twenty-seven thousand dollars, with semi-annual interest coupons annexed thereto at seven per cent., and providing for the payment of the principal at various dates ranging from six years to twenty-five years, and not longer, from date, and that the form of each of said bonds was as follows:

No. .] UNITED STATES OF AMERICA. [$.

TOWNSHIP OF BERNARDS, SOMERSET COUNTY, STATE OF NEW JERSEY.

The Inhabitants of the Township of Bernards, in the county of
6 Somerset, acknowledging themselves to owe to bearer five hundred dollars, which sum they promise to pay the holder thereof at the American Exchange National Bank, in the city of New York, twenty-three years after date hereof, and interest thereon, at the rate of seven per cent. per annum, payable semi-annually on the first day of July and January in each year, until the principal sum shall be paid, on presentation of the annexed interest-coupons, at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of the said township, in pursuance of an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868.

(On right margin:) Five hundred dollars.
(On left margin:) Five hundred dollars.

In testimony whereof the undersigned, commissioners of the said township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the said act, duly appointed, commissioned, and
7 sworn, have hereunto set our hands and seals the first day of January, 1869.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

Registered in the county clerk's office.

WILLIAM ROSS, JR.,
County Clerk.

(Coupon annexed.)

$17.50.

The Inhabitants of the Township of Bernards, in the county of Somerset, will pay to bearer, at the American Exchange National Bank, in the city of New York, seventeen $\frac{50}{100}$ dollars on the first day of January, 1889, for six months' interest on bond No.

JOHN H. ANDERSON,
OLIVER R. STELLE, AND
JOHN GUERIN,
Commissioners.

That each of said bonds was duly registered in the office of the clerk of the county of Somerset, and was signed by and in the proper handwriting of the said commissioners; that they were negotiated and disposed
8 of by the said commissioners in open market, and for money paid by various persons therefor, and with the proceeds thereof the commissioners paid to the said railroad company one hundred and twenty-seven thousand dollars for the subscription of the township for 2,540 shares of the capital stock of said company; that afterwards, in the year 1870, a certificate of 2,540 shares of the said stock was duly issued to the Inhabitants of the Township of Bernards, and was delivered to the said commissioners, who have ever since held it and voted on the same at all meetings of the stockholders and enjoyed all the benefits of ownership.

That the railroad company, during the year 1869 and 1870, caused to be built and put in operation a railroad leading from a point on the line of the Morris and Essex Railroad, near Summit, in the county Union, and extending into the township of Bernards, in the county of Somerset, entering the same at a point about two and a half miles in a southeasterly direction from the village of Baskingridge and passing through the last-mentioned village to the village of Bernardsville, in said county, a distance of about five miles in said county, the said road having a switch con-
9 nection with the Morris and Essex Railroad at the point near Summit; and that for the past three years regular passenger and freight trains have been run over the Passaic Valley and Peapack Railroad daily

from and to the said village of Bernardsville to Summit, and thence over the Morris and Essex Railroad, through Newark, to the city of New York, and that the Inhabitants of the Township of Bernards have derived great benefit therefrom, the taxable property having been increased thereby at least twenty per cent.; that the said railroad company, after completing the road from Bernardsville to the point near Summit, proceeded with the work of grading and excavating for a continuation thereof to the city of Newark, and expending a large sum of money thereon, and nearly complete' the grading for about six miles from Summit to the city of Newark, when the work stopped in consequence of the financial revolution of 1873; that about the 15th of February, 1870, the legislature of New Jersey changed the name of the Passaic Valley and Peapack Railroad Company to "The New Jersey West Line Railroad Company," without any change,
10 nevertheless, of corporate rights, powers, and privileges, and that about 1872, one Asa Packer and others, who were largely interested in the Lehigh Valley Railroad Company, became desirous of procuring a charter to construct a railroad across New Jersey, from the Delaware River to New York, in and to form a continuation of the said Lehigh Valley Road across said State, and with that view obtained control of the majority of the stock of the said Passaic Valley and Peapack or New Jersey West Line Railroad Company, voted themselves into the offices, and assumed the control thereof; that the aforesaid commissioners assisted the said Packer and his associates in their project and voted according to their wishes at all meetings of stockholders on an agreement with him and his associates that he and they should take from the township its stock in the said railroad and pay off the bonds issued by them, or indemnify the township against their payment; that early in 1873, one Benjamin F. Beekman, a wealthy capitalist, became desirous of obtaining the control, for himself and others associated with him, of the capital stock and direction of the said railroad, and for the purpose applied to said Anderson, Stelle, and Guerin
11 for their influence and votes in stockholders' meetings in that behalf, and thereupon an agreement and undertaking in writing under seal was entered into by said Beekman with the township of Bernards, by which Beekman agreed and undertook, for a good and valuable consideration, to indemnify and save harmless the said township against the payment of the principal and arrears of interest and coupons due and to grow due on all of said bonds, and delivered the same to the commissioners, and that said agreement furnished complete indemnity to the township against the said bonds, and in effect assumed their payment.

That afterwards and during the year 1873 the commissioners sold to Beekman 88 shares of the capital stock of said railroad of the par value of $4,400, and received in payment therefor an equal amount of the bonds so issued by them at their par value; that said Beekman made an effort to complete said railroad from Summit to Newark, and failed; and that in February, 1875, he departed this life, having first made and published his last will and testament, whereby he appointed Catharine A. Beek-
12 man, J. Reeve Vanderveer, and William Z. Larned, executors thereof, by whom the said will was afterwards proved, as well in New York as in New Jersey, and letters of probate were duly issued thereon by the surrogate of the county of Union to said executors; that the complainants, previous to the 5th day of May, 1874, became, by pur-

chase in open market for their market price, which they then and there paid, and were and still are the lawful owners and holders of divers of the said bonds so issued by the said commissioners of the tenor and effect therein before set forth, amounting to twenty-eight thousand on' hundred dollars; that each of said bonds was duly registered and issued by the said commissioners for value paid in open market as aforesaid, and that the complainants are the true and actual holders of the same. That the Township of Bernards, neglecting to pay the interest coupons due on said bonds since January 1, 1871, the complainants jointly, with Thomas A. Morrison, no' deceased, on the 5th of May, 1874, commenced an action at law in a plea of debt in the said circuit court of the United States against the township, to recover the arrears of interest. That a declaration was
13 duly filed therein, to which the township demurred, and said demurrer being overruled the said township, by leave of the court, filed a plea setting up as a defence to said suit that the several bonds held by the complainants were not sealed by the said commissioners, and were not the deed of the township; and complainants admit that on inspecting the said bonds, although each of them in the attestation clause thereof declare that it has been sealed by the said commissioners, and each of them is signed in the proper handwriting of the commissioners, it appears in point of fact that no seals are found thereon; that they had been taken and held by complainants without knowledge that any such defect existed; that the omission to seal said bonds was a mere mistake on the part of said commissioners; that the said bonds were issued by the commissioners in pursuance of the power and authority in them for that purpose reposed, and in good faith; that the Township of Bernards had received the full benefit and consideration therefor contemplated by law, and that the failure to affix seals thereto was an oversight and accidental omission con-
14 trary to the intention and understanding of the parties to said bonds; that it is inequitable and contrary to good conscience for the township to set up such a defence, and that the complainants as bona fide holders and bearers of the same for a valuable consideration paid are entitled in equity to have said several bonds held, treated, and considered to be as valid and effectual in law as if the same had been actually sealed by said commissioners before being issued, and is entitled to have the same reformed by actually affixing thereto at this time the seals of said commissioners.

The bill there prays that the said bonds so held by the complainants may be reformed as aforesaid, and that the Inhabitants of the Township of Bernards and the said Oliver R. Stelle and John Guerin, or one or some of them, may be decreed and directed by the court to affix to said bonds opposite the signatures of John Anderson, Oliver R. Stelle, and John Guerin their seals or scrolls or other devices in the nature of and equivalent in law to seals, and that it may be declared and decreed by the said court that the said bonds shall at all times and in all places, and for all pur-
15 poses, be held, deemed, and taken to be valid and effectual in law in all respects the same and to the same extent as if the same had been actually sealed by the said commissioners before the issuing the same, and that the said the Inhabitants of the Township of Bernards may be perpetually enjoined and restrained by the decree of this court from setting up, alleging, or pretending as a defence in said suit at law so brought by

the complainants in said court; or in any other suit at any other time hereafter to be brought by complainants in any court to recover the principal or interest or any part thereof due or to grow due on said bonds, that the said bonds or any of them were not actually sealed by said commissioners before being issued by them, or that said bonds are not the deed of the said township.

That the defendants, Catharine Adalaide Beekman, J. Reeve Vanderveer, and William Z. Larned, executors of Benjamin F. Beekman, deceased, demurred to the said bill of complaint, which demurrer was overruled by the court.

That the said defendants the Inhabitants of the Township of Bernards, the said defendants Oliver R. Stelle and John Guerin,
16 and the defendants Catharine Adalaide Beekman, J. Reeve Vanderveer, and William Z. Larned, executors of Benjamin F. Beekman, deceased, appeared and filed separate answers to the said bill of complaint, admitting certain allegations in said bill contained and denying others, and praying that they might be dismissed with their costs.

That replications were duly filed to said answers, and testimony for both sides taken, and the said cause was duly argued; that on the thirtieth day of September, 1879, a final decree was entered in this cause, in which it was adjudged and decreed that the several instruments mentioned in the bill of complaint in this cause, signed by John H. Anderson, Oliver R. Stelle, and John Guerin, commissioners, and issued by them on behalf of the Inhabitants of the Township of Bernards, in the county of Somerset aforesaid, the corporative defendant, as the bond of said corporation, but unto which said commissioners, by mistake or otherwise, neglected to affix their seals as by the statute required, are, notwithstanding said omission, the bonds of said township, to wit, the said corporation defendant;
17 that the complainants are entitled to have the same respectively sealed, if such remedy were requisite, but such sealing not appearing to be necessary for adequate relief, it is therefore ordered, adjudged, and decreed that the said instruments, and each of them, shall at all times and in all places and for all purposes, be held and taken to be valid and effectual in law, to the same extent as if the same had been in fact sealed by the said commissioners before issuing the same, and that the said The Inhabitants of the Township of Bernards, in the county of Somerset, the corporation defendants, be, and they are hereby, perpetually enjoined from pleading, alleging, or proving as a defence, either in the suit at law mentioned in said bill of complaint and now pending in this court, brought by the said complainants against the said defendant corporative, and wherein they have pleaded that said bonds were not nor was any of them the deed of said corporation, or in any other suit now pending or hereafter to be brought; that the said bonds were not actually sealed by the commissioners who issued the same, or that the said bonds are not respectively the deeds of said defendant corporation, because no
18 seals have been affixed to the names of the commissioners.

Wherefore, and the said decree being erroneous, these appellants appeal from the whole of the said decree of said circuit court, and respectfully pray that the said decree and the bill, answers, pleadings, depositions, evidences, exhibits, and all the proceedings in this cause may be sent to the Supreme Court of the United States without delay, and that the sent

said Supreme Court will proceed to hear the said cause anew, and that the said decree may be reversed with costs, or such other relief may be granted as to the said Supreme Court shall seem just.

ALVAH A. CLARK,
Sol'r and of Counsel with Appellants.

Allowed Dec. 6, 1879.

JNO. T. NIXON, *J.*

19 Supreme court of the United States.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, survivors of Thomas A. Morrison,
vs.
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the County of Somerset, Oliver R. Stelle, John Guerin, comm'rs &c., Catherine A. Beekman, J. Reeve Vanderveer, and William T. Larned, executors, &c.

Know all men by these presents that we, John Compton, William Van Dorn, and William Childs, all of the township of Bernards, in the county of Somerset and State of New Jersey, are held and firmly bound unto Thomas H. Morrison and Gardner S. Hutchinson, survivors of Thomas A. Morrison, as aforesaid, or to their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally,
20 firmly by these presents. Sealed with our seal and dated the twenty-sixth day of November, A. D. eighteen hundred and seventy-nine.

Whereas the above-named The Inhabitants of the Township of Bernards, in the county of Somerset, have taken an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the district of New Jersey: Now therefore the condition of this obligation is such that of the above-named The Inhabitants of the Township of Bernards, in the county of Somerset, shall prosecute the said appeal to effect and answer all acts if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN COMPTON. [SEAL.]
WILLIAM VAN DORN. [SEAL.]
WILLIAM CHILDS. [SEAL.]

Signed, sealed, and delivered in the presence of—

21 STATE OF NEW JERSEY,
Somerset County:

John Compton, William Van Dorn, & William Childs, being severally duly sworn on their respective oaths say: and first the said John Compton for himself says that he is a freeholder and resident in the township of Bernards, in the county of Somerset and State of New Jersey, and is worth the sum of five hundred dollars after all his debts are paid and this depo-

nent, the said William Van Dorn, for himself says that he is a resident in the township of Bernards, in the county & State aforesaid, and is worth five hundred dollars after all his debts are paid, and this deponent, the said William Childs, for himself says that he is a freeholder and resident in the township of Bernards, in the county & State aforesaid, and is worth five hundred dollars after all his debts are paid.

JOHN COMPTON.
WILLIAM VAN DORN.
WILLIAM CHILDS.

Sworn & subscribed before me November 26th, A. D. 1879, al.
Approved.

JNO. T. NIXON, *J.*

22 United States circuit court, district of New Jersey. In equity.

BETWEEN THOMAS H. MORRISON ET AL., complainants,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et al., defendants.
} On bill, &c.

Bill of complaint.—Filed May 8, 1876.

To the honorable judges of the circuit court of the United States for the district of New Jersey:

Humbly complaining, show unto your honors, your orators,
23 Thomas H. Morrison and Gardner S. Hutchinson, survivors of Thomas A. Morrison, citizens and residents of the State of New York.

1. That on or about the twenty-ninth day of March, eighteen hundred and sixty-five, the legislature of the State of New Jersey duly passed, and the governor of said State duly approved, an act entitled "An act to charter the Passaic Valley and Peapack Railroad Company," in and by which act certain persons therein named were duly authorized to organize a corporation to be named "The Passaic Valley and Peapack Railroad Company," which, when so organized, should have all the attributes of a corporation in said State, including perpetual succession and a capital stock of twelve hundred thousand dollars, with the right to increase the same to two millions of dollars, and to be divided into shares of fifty dollars each, as in and by the original of said act of the legislature, on file in the office of the secretary of state of said State of New Jersey, or a duly certified copy or the printed book of statutes thereof, will more fully appear, and to which your orators beg leave to refer for greater certainty.

2. And your orators show that in and by the sixth section of said act the said corporation was authorized and invested with all the rights and powers necessary and expedient to survey, lay out, locate and construct, maintain, and operate a railroad from some point in the county of Union or the county of Essex, in said State of New Jersey, passing through the township of Springfield, in said county of Union, into the township of New Providence, in said county, and up the Passaic Valley at or near Baskingridge, in the township of Bernards, in the county of Somerset, in

the State of New Jersey, and so on to the village of Peapack, in the township of Bedminster, in said last-mentioned county.

3. And your orators show that on or about the seventh day of February, eighteen hundred and sixty-seven, the said legislature duly passed, and the said governor duly approved, an act supplemental to said last-mentioned act, by which the said railroad company was authorized and empowered to extend their said proposed railroad to a point in the
24 county of Hunterdon, in said State, between the villages of Milford and Frenchtown, in said county, as in and by said supplemental act on file in the office of the said secretary of state, or a duly certified copy or authorized publication thereof, will more fully appear, and to which for greater certainty your orators beg leave to refer.

4. And your orators further show that after the passing and approving the said original act of incorporation of said company, but at what particular date your orators are ignorant and cannot state, except that it was previous to the year eighteen hundred and sixty-eight, the incorporators named in said act duly met in pursuance of the provisions thereof, and opened books of subscription to the capital stock thereof, and divers shares of such stock were subscribed, and the subscribers thereof duly organized themselves into a corporation under said act by electing a board of directors and officers as therein provided.

5. And your orators show that afterwards, in or about the year eighteen hundred and sixty-seven, the said corporation caused to be surveyed and located a route for their proposed railroad, commencing at a point in the county of Union aforesaid, and running through said townships of Springfield and New Providence, up the valley of the Passaic, and through the said township of Bernards.

And your orators further show that on the ninth day of April, A. D. eighteen hundred and sixty-eight, an act theretofore passed by the legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," it was duly approved and became a law of that State, a copy of which act is hereto annexed and made a part of this bill of complaint.

6. And your orators further show that afterwards, on or about the day of , eighteen hundred and sixty-eight, twelve and more freeholders of the said township of Bernards applied in writing to the circuit court of the county of Somerset, in pursuance of said act of said State of New Jersey, approved April ninth, eighteen hundred and sixty-eight, entitled "An act to authorize certain towns in the counties of Somer-
25 set, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," for the appointment by said court of three freeholders, residents of said township of Bernards, in said county of Somerset, to be commissioners of said township to carry into effect the purposes and provisions of the said act; and such proceedings were thereupon had that said circuit court being then and there held by the honorable Vancleve Dalrimple, one of the justices of the supreme court of said State, did thereupon, and within ten days after such application, appoint, under his hand and seal, John H. Anderson, Oliver R. Stelle, and John Guerin, each of whom then was a freeholder and resident of said township, to be such commissioners under said act.

7. And your orators further show that afterwards, on or about the thirteenth day of July, eighteen hundred and sixty-eight, the said John H. Anderson, Oliver R. Stelle, and John Guerin, did enter into bonds to the Inhabitants of the Township of Bernards, in the county of Somerset, in the penal sum of one hundred and thirty thousand dollars, with David L. Lewis, Henry Baird, John O. Rush, Bradner Guerin and others, on sureties conditioned that the said Anderson, Stelle, and Guerin, as such commissioners, should faithfully discharge their duties as commissioners under said last-mentioned act, and should justly and honestly apply all moneys, stocks, and bonds issued by them or coming into their hands, according to the true intent and meaning of said act of the legislature; and said bond was thereupon duly approved by the township committee of the said township of Bernards, and deposited with the clerk of said township, to be safely kept, under the direction and control of the township committee, and has so remained in the possession of the town clerk ever since, as by reference to the said bond now in the possession of the clerk of said township, or a copy thereof, reference being thereto had, will more fully appear.

8. And your orators show that afterwards, and in or about the month of July, eighteen hundred and sixty-eight, the said Anderson, Stelle, and Guerin entered upon the performance of their duties as such commissioners for said township of Bernards; and afterwards, on or about the seventeenth day of December, eighteen hundred and sixty-eight, caused to be filed in the office of the clerk of the county of Somerset, three certain paper writings annexed to each other, the bodies of which were copies of each other, and purporting, severally, to be signed by divers tax-payers of the said township of Bernards; to the first of which paper writing was attached an affidavit, made by said John H. Anderson before one James H. Thompson, justice of the peace of said county, to the effect that he was acquainted with each of the persons who had signed the said last-mentioned paper writing; that he was present and saw each of them sign the same as their voluntary act, for the uses and purposes therein expressed; and that they were severally fully informed of the contents thereof before signing the same; and to the second of said papers was attached a like affidavit, made by said John Guerin, of like tenor and effect; and to the third of said papers was attached a like affidavit, made by said Oliver R. Stelle, of like tenor and effect; and to the said three paper writings was attached an affidavit, made by one William A. McMurtry, made in like manner before said James H. Thompson, justice of the peace, that he was the assessor of the said township of Bernards, and in possession of said office and in discharge of the duties thereof, and that he had read the said paper writings and the names thereto severally annexed; and that he had carefully inspected the assessment roll of said township for the year eighteen hundred and sixty-seven, and was acquainted with the tax-payers of said township, and that the persons so signing said paper writings were a majority of the tax-payers of such townships, and represented a majority of the real property of said township; and also were a majority of the tax-payers of such township appearing on the assessment-roll of such township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they did represent a majority of the landed property of such township appearing on the assessment roll of said township for the year eighteen hundred and sixty-seven.

27 9. And your orators show that the purport of the body of said paper writings so signed by said tax-payers and filed as aforesaid, was that the persons so signing the same did thereby consent that the said commissioners so appointed for said township to carry into effect the provisions of said last-mentioned act of the legislature, might, under the provisions of said act, borrow on the faith and credit of said township and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of said township, ascertained by the assessment roll thereof for the year eighteen hundred and sixty-seven), which money was to be invested in compliance with the provisions of said act, in the stock of the said Passaic Valley and Peapack Railroad Company, and that the said commissioners might exercise full and complete powers for said township to carry into effect the purposes and provisions of said act; and said paper writings were dated July seventeenth, twentieth, and twenty-fifth, respectively, as by the originals thereof on file in the office of the clerk of said county of Somerset, or a certified copy thereof hereto annexed, will more fully appear.

10. And your orators show that after the filing of said consent papers in said office of said clerk of said county of Somerset, and on or about the twenty-third day of December, eighteen hundred and sixty-eight, a copy thereof, certified to be such under the hand and seal of said last-mentioned clerk, was duly filed with the town clerk of said township of Bernards.

11. And your orators show that afterwards, on the first day of September, eighteen hundred and sixty-nine, the said Anderson, Stelle, and Guerin caused to be filed in the office of the clerk of the said county of Somerset, three other paper writings of the same tenor and effect as those last mentioned, except that the amount of bonds to be issued was limited to the sum of one hundred and twenty-seven thousand dollars, and attached to each other in like manner, and each of which purported to be signed by divers persons purporting to be tax-payers of said township of Bernards; to the first of which was annexed an affidavit made
28 by said John H. Anderson, and to the second an affidavit made by said John Guerin, and to the third an affidavit made by said Oliver R. Stelle, of like tenor and effect in all respects as those hereinbefore set forth, as being made by those persons respectively to said consent papers so previously filed with said county clerk, and also a further affidavit, made by said William A. McMurtry, to the purport and effect that he was, at the time of the making thereof, the assessor of the said township of Bernards, and was at that time in possession of the office and discharging the duties thereof; that he had read the said last-mentioned consent papers, and also similar consent papers so previously filed as aforesaid; and that he had also read and inspected the names thereto attached, and also the proof of the signatures thereto so made by said commissioners severally and annexed thereto; and that he had also carefully inspected the assessment roll of said township for the year 1867, and that he knew the tax-payers of said township, and that the persons signing the said three consent papers so lastly filed as aforesaid, together with those who signed the said consent papers so previously filed, were, at that time, a majority of the tax-payers of said township of Bernards, and represented a majority of the real property of such township, and that the said persons so signing the said several consent papers were at that time a majority of the tax-payers of such township

appearing on the assessment roll of said township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they did, at that time, represent a majority of the landed property of said township appearing on the said assessment roll for the year 1867, as by the original of said last-mentioned consent papers, on file in the office of the clerk of said county of Somerset, or a certified copy thereof hereto annexed, will more fully appear.

12. And your orators show that afterwards, on or about the day of September, eighteen hundred and sixty-nine, a copy of said last-mentioned consent papers, certified to be such under the hand and seal of said clerk of said county of Somerset, was duly filed in the office of the clerk of said township of Bernards.

29 13. And your orators show that afterwards and before the first day of January, eighteen hundred and seventy, but on what particular day your orators are not informed and cannot state, the said Anderson, Stelle, and Guerin, acting in pursuance of the authority of said consent papers, and of the said last-mentioned act of the legislature, subscribed for twenty-five hundred and forty shares, of the par value of fifty dollars each, of the capital stock of said Passaic Valley and Peapack Railroad Company, the same to be paid for in instalments as called for by the directors of said railroad company, according to the provisions of the said charter of said railroad company, the par value of which amounted, in the whole, to the sum of one hundred and twenty-seven thousand dollars, which sum did not exceed ten per centum of the value of the landed value and real estate of said township which appeared on the assessment roll of said township for the year eighteen hundred and sixty-seven.

14. And your orators show that on or about the first day of January, eighteen hundred and sixty-nine, the said commissioners acting in pursuance of the authority of said act of the legislature, and of said consent papers so filed, caused to be prepared divers bonds of the denominations of one thousand dollars, five hundred dollars, and one hundred dollars each, respectively, and amounting in the aggregate, to one hundred and twenty-seven thousand dollars, with semi-annual interest coupons annexed thereto, at the rate of seven per cent. per annum, and providing for the payment of the principal money therein mentioned at various dates, ranging from six years to twenty-five years, and not more, from date, but the exact amount of each denomination prepared and afterwards issued as hereinafter stated, and the time fixed for payment of principal in each one, your orators are not informed and cannot state.

15. And your orators show that the form of each of said bonds is as follows:

UNITED STATES OF AMERICA. $

TOWNSHIP OF BERNARDS, SOMERSET COUNTY, STATE OF NEW JERSEY.

The Inhabitants of the Township of Bernards, in the county of
30 Somerset, acknowledge themselves to owe to bearer five hundred dollars, which sum they promise to pay the holder hereof; at the American Exchange National Bank, in the city of New York, twenty-three years after the date hereof, and interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first days of July and Jan-

uary in each year, until the said principal sum shall be paid on the presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting, in the whole, to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of said township in pursuance of an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April ninth, eighteen hundred and sixty-eight.

In testimony whereof the undersigned, commissioners of the said township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the said act, duly appointed commissioners and sworn, have hereunto set our hands and seals the first day of January, in the year of Lord one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

Registered in the county clerk's office.

WILLIAM ROSS, JR.,
County Clerk.

(Coupon) [+] (annexed.)

Five hundred dollars.

$17.50.

The Inhabitants of the Township of Bernards, in the county of Somerset, will pay the bearer at the American Exchange National Bank,
31 in the city of New York, seventeen $\frac{50}{100}$ dollars on the first day of January, 1889, for six months' interest on bond No.

JOHN H. ANDERSON,
OLIVER R. STELLE,
JOHN GUERIN,
Commissioners.

16. And your orators show that the said bonds were each of them duly registered in the office of the clerk of said county of Somerset, and the words "Registered in the county clerk's office" were printed on the face of the same, and signed by and in the proper handwriting of William Ross, jr., clerk of said county of Somerset, and each of said bonds was signed by and in the proper handwriting of said John H. Anderson, John Guerin, and Oliver R. Stelle, as commissioners aforesaid.

17. And your orators show that after the first of September, eighteen hundred and sixty-nine, the said commissioners took measures to negotiate and dispose of said bonds so prepared and signed by them and so registered in the county clerk's office, and did negotiate and dispose of the same from time to time, and at various times, and in various parcels, but what particular means and measures were adopted for so negotiating and disposing of said bonds, and upon what terms the same were negotiated and disposed of, your orators are not informed and cannot state; but they charge the

truth to be that the same were, in point of fact, all negotiated and disposed of by said commissioners in open market, and for money paid by various persons therefor, and for sums which were then the full market value of said bonds, and that with the proceeds thereof the said commissioners paid to said Passaic Valley and Peapack Railroad Company the sum of one hundred and twenty-seven thousand dollars in payment for their said subscription to said twenty-five hundred and forty (2,540) shares of the capital stock of said railroad company.

18. And your orators show that afterward, and some time in the year eighteen hundred and seventy, a certificate of twenty-five hundred and forty (2,540) shares, of fifty dollars each, of the capital stock of said
32 Passaic Valley and Peapack Railroad Company was duly issued under the corporate seal of the same, and signed by John H. Lyon, its president, and Beverly C. Sanders, its secretary, to the inhabitants of the township of Bernards, in the county of Somerset, certifying that said township was entitled to said last-mentioned number of shares in the capital stock of said company, and was duly delivered to said Anderson, Stelle, and Guerin, commissioners as aforesaid.

19. And your orators show that said commissioners have held said stock ever since, and voted on the same at all meetings of stockholders, and said township, through said commissioners, has at all times enjoyed all the benfits of ownership of said stocks.

20. And your orators show that said railroad company, during the years eighteen hundred and sixty-nine and seventy, caused to be built and put into operation a railroad leading from a point on the line of the Morris and Essex Railroad, near Summit, in the county of Union, through the township of New Providence, in said last-mentioned county, and the township of Passaic, in the county of Morris, and extending into said township of Bernards, in said county of Somerset, entering the same at a point about two and a half miles in a southeasterly direction from the village of Basking ridge, and passing through said last-mentioned village to the village of Bernardsville, in said county, a distance, in all, of about five miles in said county, and which railroad, so constructed, had a switch connection with the track of the Morris and Essex Railroad at said point near Summit, aforesaid, and for the past three years regular passenger and freight trains have been run over said Passaic Valley and Peapack Railroad daily to and from said village of Bernardsville to Summit, aforesaid, and thence over the track of the said Morris and Essex Railroad, by way of the city of Newark, to the city of New York, and the citizens, inhabitants of the said township of Bernards, have derived great benefit therefrom; the taxable property of said township has been greatly increased thereby; and your orators charge that the increase in the ratables of said town-
33 ship, resulting from the building and operating of said Passaic Valley and Peapack Railroad has been at least twenty per cent.

21. And your orators show that said Passaic Valley and Peapack Railroad Company, after completing said railroad from Bernardsville to a point near Summit as aforesaid, proceeded with the work of grading and excavating for a continuation thereof to the city of Newark, and expended a large sum of money thereon, and nearly completed the grading of the same for a distance of about six miles from a point of intersection of the track thereof near Summit aforesaid towards the city of Newark, when

the work was brought to a stand-still by the financial revolution of the year eighteen hundred and seventy-three, under the circumstances hereinafter stated.

22(*a*). And your orators show that on or about the fifteenth day of February, eighteen hundred and seventy, the legislature of the State of New Jersey passed an act, and the governor of said State approved the same, entitled "An act to change the name of the Passaic Valley and Peapack Railroad Company," by which it was enacted that the name of said corporation should be changed to, and said corporation should hereafter be known by the name of, the "New Jersey West Line Railroad Company," and that said corporation should continue to be the same corporation as heretofore; and all the rights, powers, privileges, and obligations of and pertaining to said corporation by virtue of any law of said State should be and remain the same under and in the said new name as if the name had not been changed; and your orators beg leave to refer to said act on file in the office of the secretary of state of New Jersey, or a certified copy thereof, or to one published by authority of said State, for greater certainty.

23. And your orators show that some time in the year eighteen hundred and seventy-two, but at what particular time your orators do not know, and cannot state, one Asa Packer, of the State of Pennsylvania, together with other persons associated with him, all of whom were largely interested in the Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania, became desirous of procuring a charter to con-
34 struct a railroad across the State of New Jersey from the Delaware River to New York, for the purpose of forming a continuation of said Lehigh Valley Railroad across said last-mentioned State, and with that view obtained control of a majority of the stock of said Passaic Valley and Peapack Railroad Company, now the New Jersey West Line Railroad Company, and voted themselves into the offices and assumed the control thereof; that said commissioners assisted said Packer and his said associates in their said project, and voted according to their wishes at all meetings of stockholders, on an agreement with said Packer and his associates that he and they should take from said township its said stock in said railroad and pay said bonds so by them issued, or in some manner indemnify said township against their payment; that said Packer and his associates were men of great wealth and controlled a large amount of capital, and were entirely responsible for their undertaking in that behalf.

24. That early in the year eighteen hundred and seventy-three, one Benjamin F. Beekman, a wealthy capitalist of the city of New York, became desirous of obtaining control for himself and certain other persons associated with him, of the capital stock and direction of said Passaic Valley and Peapack Railroad, now the New Jersey West Line Railroad Company, and for that purpose applied to said Anderson, Stelle, and Guerin for their influence and votes in stockholders' meeting in that behalf; and thereupon an agreement and undertaking in writing, under seal, was entered into and made by said Beekman with said township of Bernards, by which said Beekman agreed and undertook, for a good and valuable consideration, to idemnify and save harmless said township of Bernards against the payment of the principal and arrears of interest and coupons due and to grow due on all of said bonds, and delivered said un-

dertaking to said commissioners, and the same is now in their possession or the possession of one of them; but your orators cannot give the date and exact language of the same, not having had inspection thereof, but they charge that the same furnishes full and complete indemnity to said township against said bonds, and in effect assumes their
35 payment, and is at this time a good, valid, and binding agreement.

25. And your orators further show, that afterwards, in and during the year eighteen hundred and seventy-three, the said commissioners, acting for said township, sold and assigned to said Benjamin F. Beekman eighty-eight shares, of the par value of four thousand and four hundred dollars of the capital stock of said railroad company, and received in payment thereof an equal amount, in the aggregate, at their par value, of the said bonds so issued by them, but the numbers and amounts of the several bonds so by them received your orators do not know and cannot state.

26. And your orators further show that the said Benjamin F. Beekman made an effort to complete said railroad from said point of intersection with the Morris and Essex Railroad near Summit to Newark, but failed therein, and afterwards, on or about the day of February, eighteen hundred and seventy-five, departed this life, having first duly made and published his last will and testament, whereby he constituted and appointed Catherine Adelaide Beekman, I. Reeve Vanderveer, and William J. Leonard, executors thereof, by whom the said will was afterwards proved, as well in New York as in New Jersey, and letters of probate thereon were duly issued by the surrogate of the county of Union to , , the said executors, who assumed the trusts thereof, and are now in execution of the same.

27. That your orators, previous to the fifth day of May, in the year of our Lord eighteen hundred and seventy-four, became and were, by purchase thereof in open market for their then market price, which they then and there paid therefor, and still are the lawful owners and holders of divers of said bonds so issued by said commissioners, of the tenor and effect hereinbefore set forth, and of the several numbers and amounts, and payable at the several times hereinafter stated, that is to say:

The following bonds, each for the payment of one thousand dollars, namely, numbers fifty-one and fifty-two, payable in twenty-one
36 years; numbers fifty-three, fifty-four, and fifty-five, each payable in twenty-two years; numbers fifty-six, fifty-seven, and fifty-eight, each payable in twenty-three years; number sixty-one, payable in twenty-four years; numbers sixty-two, sixty-three, sixty-four, and sixty-five, each payable in twenty-five years; numbers forty-one and forty-two, each payable in fifteen years; numbers forty-eight and forty-nine, each payable in twenty years; and number fifty, payable in twenty-one years from the respective dates of said bonds. Also the following bonds, each for the payment of five hundred dollars, namely: numbers one hundred and thirty and one hundred and thirty-one, each payable in twenty-two years; numbers one hundred and forty-two, one hundred and forty-three, one hundred and forty-four, and one hundred and forty-five, each payable in twenty-four years; number one hundred and nine, payable in sixteen years; and numbers one hundred and ten, one hundred and eleven, and one hundred and thirteen, each payable in seventeen years from the respective dates of said bonds. Also the following bonds, each for the pay-

ment of one hundred dollars, namely: numbers one hundred and sixty, one hundred and sixty-two, and one hundred and sixty-three, each payable in seven years; numbers one hundred and sixty-nine and one hundred and seventy-one, each payable in eight years; numbers three hundred and thirty-seven, three hundred and thirty-eight, three hundred and thirty-nine, three hundred and forty, and three hundred and forty-one, each payable in twenty-three years; numbers two hundred and ten, two hundred and fourteen, two hundred and fifteen, two hundred and sixteen, two hundred and seventeen, and two hundred and twenty-two, each payable in twelve years; numbers two hundred and twenty-three, two hundred and twenty-seven, two hundred and twenty-eight, and two hundred and twenty-nine, each payable in thirteen years; number two hundred and sixty-five, payable in sixteen years; numbers two hundred and sixty-six, two hundred and sixty-seven, two hundred and sixty-eight, two hundred and sixty-nine, two hundred and seventy, two hundred and seventy-one, two hundred and seventy-two, two hundred and seventy-three, two hundred and seventy-four, two hundred and seventy-five, and two hundred and
37 seventy-six, each payable in seventeen years; numbers two hundred and seventy-seven, two hundred and seventy-eight, two hundred and seventy-nine, two hundred and eighty-one, two hundred and eighty-two, two hundred and eighty-three, two hundred and eighty-six, two hundred and eighty-seven, each payable in eighteen years; and number one hundred and eighty-three, payable in nine years from the respective dates of said bonds.

28. And your orators further show that each of said bonds so holden by your orators is in the form and of the tenor and effect hereinbefore for that purpose set forth, and was duly registered in the office of the clerk of the county of Somerset, and is duly endorsed by said clerk in the manner hereinbefore for that purpose mentioned, and was duly issued by said commissioners, as hereinbefore set forth, bona fide and for value paid on sale in open market, as aforesaid, to various purchasers, whose names your orators are unable to state, but they show and charge that in the case of each of the purchasers a full and valuable consideration, in cash, was paid by such purchasers for said several bonds, the amount whereof in each particular case your orators are unable to state, but charge the truth to be that it amounted to about ninety cents on the dollar of the face of said several bonds; and your orators show that from said purchasers, or those holding under them by intermediate transfers and sales for value, made in open market for the then market price, your orators are the true and actual holders of said bonds.

29. That none of the interest coupons in said several bonds were duly paid by said township since and including the coupons July first, eighteen hundred and seventy-one, no payments of interest coupons having been made after the first day of January, eighteen hundred and seventy-one; that on many of said bonds held by your orators the coupons due January first, eighteen hundred and seventy-one, are still unpaid, and on bond number sixty-seven no interest has been paid since July first, eighteen hundred and sixty-nine, and that, therefore, your orators (jointly with Thomas
A. Morrison, now deceased), on or about the fifth day of May,
38 eighteen hundred and seventy-four, commenced an action at law in

a plea of debt ten thousand dollars, in this court, against the said township of Bernards, to recover the said arrears of interest; that said township was duly served with the process of this court, and duly appeared to said action; that your orators duly filed their declaration therein and the said township demurred thereto, which demurrer was afterwards overruled, and the said township thereupon, by leave of the court, filed a plea to said declaration, in and by which said township set up as a defence to said action at law, that said several bonds so held by your orators and to recover the arrears of interest on which said action at law was brought, were not sealed by said commissioners, nor even the deed of said township, and your orators admit that on inspecting said several bonds, although each of them, in the attestation clause thereof, declares that it has been sealed by said commissioners, and each of them is signed in the proper handwriting of each of said commissioners, yet in point of fact no seals are found thereon.

30. And your orators further show that said bonds were taken and held by them without knowledge that any such defect existed, and they show and charge that the omission to seal said bonds was a mere mistake on the part of the said commissioners; that said bonds were issued by said commissioners in pursuance of the power and authority in them for that purpose reposed and in perfectly good faith; that said township of Bernards had secured the full benefit and consideration therefor contemplated by law, and that the failure to affix seals thereto was pure oversight and an accidental omission, and contrary to the intention and understanding of the parties to said bonds respectively.

31. Your orators show that it is inequitable, unjust, and contrary to good conscience, for said township, under the circumstances hereinbefore set forth, to set up as a defence to the payment of said several bonds and the several interest coupons thereto annexed, or any of them, that the same were not actually sealed by said commissioners; and that your orators, as bona fide holders and bearers of the same, for a valuable consideration therefor paid, are, under said circumstances, entitled in equity to
39 have said several bonds held, treated, and considered at all times, and in all places, and under all circumstances, to be as valid and effectual in law as if the same had been actually sealed by said commissioners before being issued, and are also entitled to have the same reformed by actually affixing thereto at this time the seals of said commissioners, which seals so to be affixed shall have the same force and effect as if so affixed before said bonds were issued by said commissioners.

Therefore your orators pray the aid of this court in the premises.

To the end, therefore, that the said defendants, the Inhabitants of the Township of Bernards, in the county of Somerset, Oliver R. Stelle, John Guerin, Catherine Adelaide Beekman, and William Z. Larned, executors of the last will and testament of Benjamin F. Beekman, deceased, defendants in this suit, may, if they can, show cause why your orators should not have the relief hereby prayed, and may answer all and singular the premises, but not under oath, an answer under oath being waived, and that the said several bonds so held by your orators and hereinbefore particularly mentioned, may be reformed as aforesaid, and that the said The Inhabitants of the Township of Bernards, in the county of Somerset, and the said Oliver R. Stelle and John Guerin, or one or some of them, may

be decreed and directed by this court to affix to said bonds, opposite the signatures of said John H. Anderson, Oliver R. Stelle, and John Guerin, their seals or scrolls, or other devices in the nature of and equivalent in law to seals, and that it may be declared and decreed by this court that the said several bonds shall at all times and in all places and for all purposes be held, deemed, and taken to be valid and effectual in law in all respects the same and to the same extent as if the same had been actually and in fact sealed by said commissioners before the issuing of the same; and that the said The Inhabitants of the Township of Bernards, in the county of Somerset, may be perpetually enjoined and restrained by the decree of this court from setting up, alleging, or pretending as a defense in said suit at law so brought by your orators in this court, or in any other suit at
40 any other time hereafter to be brought by your orators in any court to recover the principal or interest, or any part thereof due or to grow due on said bonds, that the said bonds or any of them were not actually sealed by said commissioners before being issued by them, or that said bonds are not the deed of the said The Inhabitants of the Township of Bernards, and that your orators may have such further and other relief as may be agreeable to equity and good conscience:

May it please your honors, the premises considered, to grant unto your orators not only a writ of injunction of the United States of America, to be issued out of and under the seal of this honorable court, and directed to the said The Inhabitants of the Township of Bernards, in the county of Somerset, its agents and attorneys, enjoining and restraining them as is hereinbefore prayed, but also the writ of subpœna of the United States, to be issued out of and under the seal of this court, and directed to the said The Inhabitants of the Township of Bernards, in the county of Somerset, the said Oliver R. Stelle, John Guerin, , commanding them and each of them, on a certain day, and under a certain penalty to be expressed, personally to be and appear in this court, to answer all and singular the premises, and to stand to, abide by, and perform such decree as to your honors shall seem meet, and shall be agreeable to equity and good conscience, and your orators, as in duty bound, will ever pray, &c.

CORTLANDT & R. WAYNE PARKER,
Solicitors of said Complainants.
CORTLANDT PARKER,
Of Counsel.

41 United States circuit court, district of New Jersey, In equity.

BETWEEN THOMAS H. MORRISON & ALS., compl'ts, *and* THE INHABITANTS OF THE TOWNSHIP OF Bernards, and als, def'ts. } On bill, &c.

The demurrer of Catharine Adelaide Beekman, I. Reeve Vanderveer, and William Z. Larned, executors of the last will and testament of Benjamin F. Beekman, deceased, to the bill of complaint of Thomas H. Morrison and Gardner S. Hutchinson, survivors of Thomas A. Morrison, complainants.

These defendants, by protestation, not confessing or acknowledging all

or any of the matters or things in and by the said bill set forth and complained of to be true in manner and form as the same are therein and thereby set forth and alleged, say that they are advised by their counsel that there is no matter or thing in the said bill contained good and sufficient in law to call these defendants in question in this honorable court
42 for the same, but that there is good cause for demurrer thereunto; and therefore these defendants say that the said bill of the complainants (in case the allegations therein contained were true, which these defendants do in no sort admit) contains not any matter in equity whereon this court can ground any decree, or give the complainants any relief or assistance as against these defendants, wherefore, and for divers other errors and imperfections in the said bill appearing, these defendants do demur in law thereunto, and humbly demand the judgment of this honorable court whether they shall be compelled to put in any other or further answer to the said bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

McCARTER & KEEN,
Solicitors for, and of Counsel with, Def't's Executors.

43 NEW JERSEY,
Essex County, ss:

J. Reeve Vanderveer, being duly sworn according to law, on his oath saith that he is one of the defendants above named, and that the above demurrer is not interposed for the purpose of delay, but in good faith.

J. REEVE VAN DERVEER.

Sworn and subscribed before me this 28 day of July, A. D. 1876.

JOHN H. MEEKER,
U. S. Commissioner for the District of New Jersey.

I hereby certify that I have perused the bill of the complainants herein and that the above demurrer thereto is well founded in point of law.

THOMAS N. McCARTER,
Of Counsel.

Filed July 29, 1876.

44 *Answer.—Filed August* 19, 1867.

The answer of the Inhabitants of the Township of Bernards, in the county of Somerset, to the bill of complaint of Thomas H. Morrison and Gardiner S. Hutchinson, complainants.

This defendant, now and at all times hereafter, saving and reserving to itself all manner of benefit and advantage of exception to the many errors, uncertainties, and defects in the said complainants' said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as it is advised are material and necessary for it to make answer unto, it answers and says:

2. As to the facts stated in the first paragraph of said bill, this defendant admits the same.

3. This defendant admits the statement of fact contained in the second paragraph of said bill.

4. This defendant cannot admit or deny the facts stated in the third paragraph of said bill.

5. This defendant admits that the said railroad corporation did locate a railroad, or a part of a railroad, substantially as stated in the fourth paragraph of said bill, but the precise time of making said location this defendant cannot state.

6. This defendant admits that on or about the twenty-seventh of June, eighteen hundred and sixty-eight, the judge of the circuit court of the county of Somerset, did appoint John H. Anderson, John Guerin, and Oliver R. Stelle, who were residents of Bernards Township, to be, as was said, commissioners of said township to carry into effect the purposes and provisions of an act of the legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union, to issue bonds and to take stock in the Passaic
45 Valley and Peapack Railroad Company," approved April ninth, eighteen hundred and sixty-eight, but this defendant saith that said act of the legislature was not asked for, or procured, by this defendant, but was asked for and procured by the said Passaic Valley and Peapack Railroad Company; that this defendant did not apply for or authorize application to be made for the appointment of said commissioners, or for any commissioners, for the purposes for which said commissioners were designated; but said commissioners were applied for at the request and by the procurement and for the uses and purposes of the said railroad company, and that this defendant was in no way or manner a party, but was an entire stranger to the appointment of the said commissioners; that said commissioners were not and never have been officers chosen or appointed by this defendant, nor have said commissioners at any time acted by or under the authority or direction of this defendant. This defendant at no time has had any power to direct or control said commissioners, nor has it at any time, in any way, or for any purpose, directed or controlled the actions or omissions of the said commissioners; but whatever the said commissioners have done since their said appointment in and about the pretended execution of the last-mentioned act of the legislature, has been done independently of any power or authority conferred or obtained from this defendant.

This defendant does not admit, but denies the legality and regularity of the appointment of the said commissioners; and this defendant further says that if this defendant can be bound or affected at all by any acts of the said commissioners, it can be only by such of their acts as are in strict conformity to and in compliance with the letter and spirit of the last-mentioned act of the legislature; and that there is not any ground for holding this defendant liable or answerable for any of the acts of the said commissioners, except on the ground of express statutory enactment; the whole proceedings of said commissioners, so far as this defendant is concerned, have not been sought or assumed by, but imposed on this defendant.

46 7. This defendant supposes the allegations contained in the sixth paragraph of said bill to be substantially true, but it is not particularly informed in respect thereof.

8. This defendant admits that the said commissioners, on the seventeenth day of December, eighteen hundred and sixty-eight, did cause to be filed in the clerk's office of the county of Somerset the consents and affidavits

mentioned in the seventh paragraph of said bill. It further says that the consents, appearing by said Anderson's affidavit, are one hundred and eight; by said Guerin's affidavit, one hundred and fourteen; and by said Stelle's affidavit fourteen, making, in all, the consents of two hundred and thirty-six persons. This defendant further saith that the number of the persons who were tax-payers in the said township of Bernards, in the year eighteen hundred and sixty-seven, appearing on the assessment rolls of said township for that year were eight hundred and four, and of that four hundred and forty-nine were taxed for land, and were therefore prima facie land-owners. This defendant further saith that the affidavit of the assessor of said township, referred to in the seventh paragraph of said bill, which affidavit purports to have been made on the nineteenth of September, eighteen hundred and sixty-eight, was not true in fact; while the truth was that a majority of the tax-payers of said township for the year eighteen hundred and sixty-nine had not signed said consents; and the truth also was that not many over one-fourth of the tax-payers of said township for the year eighteen hundred and sixty-seven had signed said consents. And this defendant further saith that all and every of said commissioners had long resided in said township, well knew the inhabitants thereof, and all of them knew that the signers to said consent did not constitute a majority of the tax-payers of said township in the year eighteen hundred and sixty-seven.

This defendant further saith that the mode of obtaining the consents of the tax-payers of said township, for the purposes of the last-mentioned act of the legislature, provided in said act were and are unfair and inequitable, and were devised and contrived by the officers and agents of the said railroad company, or some of them, for the purpose of deceiving and
47 imposing on the tax-payers of said township, and for the purpose of furnishing an opportunity to get such consents from the tax-payers on ex-parte interested statements, without affording the tax-payers an opportunity to get informed, and to understand the nature, effect, and consequences of such consent. This defendant further saith that before said consents were applied for, the officers, agents, and retainers of said railroad company said and caused to be generally circulated among the people of said township that if said bonds of said township were issued for the purpose of aiding the construction of said railroad, the said township would have the first lien upon all the property of said railroad company to secure it for the bonds it should issue; that the said railroad company would pay the interest on the said bonds without any recourse therefor to said township until said railroad company should pay dividends of seven per cent. per annum on its stock, and that then the dividends received by said township on its stock would pay interest on its bonds, and that the said stock could be sold for enough or more than enough to pay the principal of said bonds; that a large portion of said tax-payers were uninformed and inexperienced as to such matters, and were not called to any public meeting of the inhabitants of said township at which to discuss and vote upon the giving of such consent, and therefore many of them when called upon at their houses and persuaded by friends and agents of said railroad company to sign said consents, did so under misapprehension, in entire ignorance of the consequences and effects of signing said consents; this defendant further insists and submits that the aforesaid affidavit of the assessor is palpably

defective and insufficient, because it does not state the number of tax-payers on the assessment rolls in said township in the year eighteen hundred and sixty-seven, nor whether the signers of said consents represented the majority in acres or in value of the landed property in said township.

And this defendant, in this connection respectfully calls the attention of this honorable court to the terms of the said consents, and to the fact that said consents were that said commissioners under the provisions of said act might borrow on the faith and credit of said township,
48 and execute bonds for the same, for one hundred and thirty thousand dollars, which money was to be invested in compliance with the provisions of said act in the stock of said railroad company, and that no consent was given to issue any bonds except in exchange for money actually loaned to said commissioners, and that no consent was given to issue any bonds to be exchanged for stock in the said railroad company or any exchange for anything but money.

9. The forms of said consents are substantially stated in the eighth paragraph of said bill, but for greater certainty this defendant prays leave to refer to duly authenticated copies of said consents if occasion shall require.

10. This defendant denies the allegations in the ninth paragraph of said bill, but says that it believes it to be true that some time after the twenty-third day of December, eighteen hundred and sixty-eight, the exact time being unknown to this defendant, copies of the papers mentioned in this paragraph were left with the clerk of said township, but were never in fact filed.

11. This defendant admits that on the first of September, eighteen hundred and sixty-nine, the said commissioners did file in the clerk's office of the county of Somerset what purported to be consents and affidavits, which to some extent are correctly described in the tenth paragraph of said bill, by which it appears that one hundred and ninety-six persons, alleged to be tax-payers in the said township of Bernards, in the year eighteen hundred and sixty-nine, did consent that the said commissioners might, under the provisions of the said last-mentioned act, borrow on the faith and credit of said township and execute bonds of the same for one hundred and twenty-seven thousand dollars, which money was to be, in compliance with the provisions of said act, invested in the stock of said railroad company; this defendant respectfully submits that said last-mentioned consents were and are in all respects illegal, nugatory, and of no force and effect for any purpose whatsoever; that the alleged signers of said consents, in the year eighteen hundred and sixty-nine, had no power or right to give such consents as of or for the years eighteen hundred and sixty-seven or eighteen hundred and sixty-eight; that the affi-
49 davit of the assessor annexed to said last-mentioned consents is wholly insufficient; that it does not show that the persons who signed the last-mentioned consents constituted a majority of the tax-payers of said township in the year eighteen hundred and sixty-seven, nor does it refer to any previous consents given by other persons in such way or manner as to show that the consents given in eighteen hundred and sixty-nine added to the consents given in eighteen hundred and sixty-eight constituted a majority of the tax-payers of said township; this defendant respectfully submits that said last-mentioned consents, that is, the con-

sents of eighteen hundred and sixty-nine, looked at as original consents, were illegal and wholly insufficient, and if looked at as a ratification or confirmation of consents, illegally and insufficiently given in the year eighteen hundred and sixty-eight, they are illegal and of no effect whatsoever, because they do not purport or pretend to be, nor can they operate as a confirmation or ratification of any act or acts previously illegal or insufficiently performed; this defendant further respectfully submits that the consents so as aforesaid given in eighteen hundred and sixty-eight and in eighteen hundred and sixty-nine were not the consents of a majority of the tax-payers of said township within the meaning of the said act of the legislature, nor were said consents verified in the manner described and required in said act, nor did said consents furnish any right, power, or authority for anything done by the said commissioners in or about the making or issuing of the papers which in the said bill of complaint are called bonds of said township.

12. This defendant admits that such papers as are mentioned in the eleventh paragraph were left with the clerk of the said township of Bernards some time after the eleventh of September, eighteen hundred and sixty-nine, the exact time being unknown to this defendant, but they were never filed by said clerk.

13. This defendant has been informed, and believes the fact to be, that on the day of December, eighteen hundred and sixty-eight, the said commissioners did subscribe for twenty-five hundred and forty shares of the capital stock of the said railroad company, of the nominal par value of fifty dollars a share, but this defendant denies that the said commissioners had any power or right to make any such subscription, because at the time when the said subscription was made the said commissioners, on the faith and credit of said township, had not borrowed any sum of money whatever, nor could they then borrow on the faith and credit of said township at a rate of interest, still hold the said stocks, or the principal part thereof, but it is not now nor has it ever been of any value, utility, or benefit whatever to this defendant. This defendant further saith, as hereinbefore stated, that a large portion of the persons who signed the aforesaid consents were induced to do so by the representations made by the officers and agents of the said railroad company, that said railroad was without any mortgage on it, and that said railroad company had no power to mortgage its railroad franchises, and that the holders of the stock of said company, including the said township, would have first claims upon the property and franchises of said company, and that the interest upon bonds of the said township proposed to be issued would be paid by the said railroad company until the dividends upon the stock of said township should *be* sufficient to pay the interest of its bonds, that then said interest should thereafter be paid by said dividends; but after said consents had been obtained, and after said railroad company had obtained possession of said so-called bonds, and after it had disposed of them as hereinbefore stated, the said railroad company made application to the legislature of New Jersey for an act authorizing it to mortgage its railroad and franchises as security for bonds thereafter to be issued by said railroad company, and obtained said act, which was entitled "Supplement to an act entitled 'An act to charter the Passaic Valley and Peapack Railroad Company,' approved March twenty-ninth, eighteen hundred and sixty-five, and its several supple-

ments, approved February seventh, eighteen hundred and sixty-seven, and April ninth, eighteen hundred and sixty-eight," and was approved March sixteenth, eighteen hundred and sixty-nine, as by reference to said act, leave of reference to which is hereby prayed, will more fully and at large appear; that by authority of said last
51 mentioned act the said railroad company, on or about the tenth day of March, eighteen hundred and seventy, did execute and deliver to Theodore F. Randolph and Benjamin G. Clark, trustees, a mortgage of all its property and franchises to secure coupon bonds of said company to the amount of three million dollars, which mortgage bears date the day and year last aforesaid, and was recorded in the clerk's office of the said county of Somerset on the fifteenth day of March, eighteen hundred and seventy-two, in book C 2 of mortgages, page 576, as by reference to said mortgage, or duly certified copy thereof, leave of reference to which is hereby prayed, will more fully and at large appear. That immediately after the execution of said mortgage the said company did issue its coupon bonds to an amount exceeding two million dollars, which went into the hands of divers persons who claimed to have purchased the same, and to be lawful holders thereof; that said railroad company paid very little, if any, interest on any of its said bonds, and all the interest thereon, or nearly all, remain wholly unpaid, and all the property of said company and its franchises are not worth and will not produce one-third of the amount of principal and interest now owing on the said bonds of said company. That said company, in the year eighteen hundred and seventy, or before that time, became and was, and ever since has been, hopelessly insolvent; that on the sixteenth of February, eighteen hundred and seventy-four, the property of said company was put into the hands, possession, and control of a receiver thereof, appointed by the court of chancery of the State of New Jersey, at the suit of one Reuben S. Middleton, against said railroad company, and that said receiver retained possession and control of said property until the year eighteen hundred and seventy-six, when the possession and control of said property was transferred to the said trustees named in said mortgage. This defendant further says that it is unable to state how much of the stock of said railroad company was ever subscribed for, but its information is that but a small amount thereof was ever subscribed, and that an account of what was subscribed, for no money of any material amount or consequence was ever paid, and that all the op-
52 eration of said company heretofore had, have been carried on on credit at exhausting and ruinous rates of interest.

20. In answer to the twentieth paragraph of said bill of complaint, this defendant says that so much of said railroad as described in this paragraph has been so far built as to make it possible to run an engine with two or three cars upon it. But the construction is crude and temporary, and barely usable. The earnings of said road are merely nominal, and not sufficient to defray the working expenses of the very few trains which are run upon it, and without a very large outlay of money to complete the construction of that part of the railroad it will soon be wholly and totally unfit for use, and of no value; and this defendant denies and says it is not true that said railroad has added anything to the real or taxable value of the property in said township, and that the said township is, and the people thereof are, in a much worse condition, financially, than they would

have been if nothing had ever been done in said township in and about the construction of said railroad.

21. In answer to the twenty-first paragraph of said bill, this defendant says that it has been informed and believes that some work of the kind mentioned in this paragraph was engaged in, but it was wholly abandoned in or prior to the year eighteen hundred and seventy-three, since which nothing has been done in or about the same, and what was done is not now and never has been of any practical value.

21(*a*). This defendant admits the facts stated in this paragraph of said bill.

22. This defendant, in answer to this paragraph, which in the bill is number twenty-one, after twenty-one *a*, saith that its information and belief are that said Packer and his associates never did own a majority of the stock of said railroad company; this defendant says there was a report and expectation in said township of Bernards that said Packer would provide for the payment of principal and interest of the said so-called bonds of the said township, and would take the stock subscribed for by said commissioners, and thereby relieve this defendant from all seeming
53 connection with said railroad enterprise, but said Packer did not do so, and when asked to do so denied that he had ever promised or agreed to do so.

23. In answer to this paragraph (which in said bill is also numbered twenty-one, being the fourth paragraph so numbered), this defendant saith that it knows nothing of the matters therein stated, except by rumor and report, which have been to the effect that after the said Packer refused to take care of the said so-called bonds, an agreement something like the one stated in this paragraph was made between said commissioners and said Beekman, but with said agreement, if any such was made, this defendant had nothing to do, nor is it in any way liable thereon or responsible therefor. The information of this defendant is that said Beekman did not assume nor agree to pay any of the said so-called bonds, but simply agreed with said commissioners to indemnify them or the said township against any loss or damage or payment of money by reason of any suit that might be brought and recovery had against said township or said commissioners on any of said so-called bonds.

24. As to the facts alleged in this paragraph of said bill, which in said bill is numbered twenty-three, this defendant is ignorant, and can make no answer, except to say that it has heard in a general way that said Beekman did take some shares of the capital stock of said railroad company from said commissioners, and did give them in exchange therefor an equal amount, at par, of said so-called bonds, but the amount of either this defendant is not able to say.

25. As to the allegations in the twenty-fifth paragraph of said bill, in said bill numbered twenty-four, this defendant, for want of knowledge, is not able to make answer thereunto, and it leaves the complainant to make such proof thereof as he may be advised is necessary.

26. How many of the said so-called bonds the said complainants have in their possession this defendant is unable to say, and it prays that the complainants shall be required to make lawful proof thereof, and by proof show how many they have, where they obtained them, of whom they obtained them, and what contract, agreement, or understanding they

54 received and hold each of them; and so far as they paid anything for any of them, that they must state how much and in what way they paid therefor; and this defendant charges the fact to be that, of the bonds mentioned in the twenty-fifth paragraph of said bill, the said complainants are not the owners of any one thereof.

This defendant, on information and belief, denies that the said complainants are the owners in their own right of any of the bonds mentioned in the said bill of complaint, and of which they claim to be the holders; that whatever of said bonds the said complainants may hold they hold only as custodians or depositaries for other persons, all or nearly all of whom are residents and citizens of the State of New Jersey, who have lodged their said bonds with the said complainants to the end that the said complainants may bring suit thereon in this honorable court for the use and benefit of the real owners of said bonds.

27. As to every of said bonds for or on account of which said complainant has any right to prosecute this suit in this honorable court, this defendant submits that the said complainants have no right to any of the relief prayed for in their bill of complaint, because, besides many other reasons, the following, namely:

First. Because the said commissioners did not have the consent of a majority of the tax payers of the said township of Bernards appearing on the tax-rolls of said township for the year eighteen hundred and sixty-seven, to borrow money or issue bonds for the purpose of aiding in the construction of said railroad.

Second. Because the said commissioners never borrowed any money whatever for the purpose of purchasing any of the stock of said railroad company, and therefore never had any authority to issue any bonds in the name of or on the faith or credit of this defendant.

Third. Because the said commissioners never did execute or deliver any bonds whatever.

Fourth. Because the said pretended bonds are not the bonds in law of this defendant, and were not and are not executed according to the requirements of the said act of the legislature in such case made and provided.

55 Fifth. Because said so-called bonds were not only made and signed and delivered to said railroad company without authority of law, and contrary to and in violation of law, but this defendant has never received any consideration or benefit therefrom, and no equity attaches to this defendant in respect thereof.

Sixth. Because said complainants had lawful, reasonable, and sufficient notice that said bonds were illegal, irregular, and improperly issued, to put them upon inquiry into all the facts and circumstances connected with the partial making and issuance thereof, and it placed him in the same position as if he had had the fullest possible knowledge of every fact and circumstance connected with the proceedings had in and about or in connection with the partial making and issuance of the said so-called bonds.

Seventh. That there is no mistake or oversight in or about or connected with the said so-called bonds, except in writing or printing the form of the bonds on paper and signing the names of the said commissioners thereto, and delivering said papers so signed to said railroad company, all of which were mistakes, injurious to this defendant, and should not be added to or

increased by any further additions to said unauthorized and illegal documents.

28. This defendant denies the allegations contained in the twenty-sixth paragraph of said bill, and says that so far forth as any of the pretended bonds were purchased by any of the persons mentioned *are* referred to in that paragraph, were bought at very large reductions below the amounts named therein, and more of them below seventy cents on the dollar than there were above that price. They were sold and bought, when bought at all, at very low prices, because said bonds were discredited in the market by reason of their known or supposed illegality and irregularity, and were bought upon speculation under circumstances that gave the buyers thereof no equity or equities against this defendant.

29. As to what if any interest has ever been paid on the said so-called bonds this defendant does not know and cannot tell, but it does know and does tell that it has never, at any time or in any way, paid any interest on any of the said pretended bonds, and if any interest has ever been
56 paid thereon, it was done by the said railroad company on its own account to enable it to dispose of the said pretended bonds. This defendant admits the commencement of the action at law mentioned in paragraph twenty-seventh, and it admits that among the pleas which it pleaded to the declaration of the said plaintiff in said action was the plea of non est factum.

30. As to any request made by or for said complainant of the two survivors of said commissioners this defendant has no knowledge, and cannot admit or deny the allegations contained in the paragraph of said bill upon that subject, nor does this defendant know why said commissioners did not affix seals to said so-called bonds; but this defendant submits that it is immaterial what those reasons may have been, because said commissioners never had any right to sign nor to seal said so-called bonds, or any of them; and this defendant further says that whatever construction may, in law, be put upon the acts and omissions of the said commissioners the fact is, and so it should be regarded in a court of equity, that the said commissioners in and about the signing of the said so-called bonds and the delivery thereof to the said railroad company were not the agents of this defendant, but were the instruments and agents of the said railroad company, and whatever equities may spring from the acts or omission of the said commissioners do not attach or apply to this defendant, and should apply to the said railroad company; that none of the equities, real or supposed, arising out of the acts or omissions of the said commissioners attach or apply to this defendant, because—

First. It did not ask or procure the said act, and the passage of said act was an unjust imposition upon this defendant, procured by the said railroad company.

Second. Because this defendant did nothing to get said commissioners appointed, and they were not officers chosen, appointed, or adopted by this defendant.

Third. Because the said consents so far as they were obtained by misrepresentations made by and on behalf of the said railroad company
57 and by misunderstandings produced in the signers of said consents by said railroad company and its agents.

Fourth. Because this defendant never received any money or other

valuable consideration in return for said pretended bonds, nor any benefit or advantage therefrom.

Fifth. Because this defendant never authorized or adopted the said so-called bonds.

Sixth. Because this defendant never had the said railroad stock or any benefit therefrom.

Seventh. Because the said railroad stock was never of any value whatever.

Eighth. Because if the said complainants were in any way misled it was not done by this defendant nor by any officers or agents by this defendant chosen, or appointed, or authorized to act in the premises on its behalf.

Ninth. Because as against this defendant the said complainant has no equities and is not entitled to have the said pretended bonds sealed.

And this defendant denies all unlawful acts in said bill of complaint alleged or charged against it, without this, that any matter or thing in said bill alleged and herein not expressly and distinctly denied, admitted, or avoided, is true to the knowledge or belief of this defendant; all which matters and things this defendant is prepared to aver, maintain, and prove as this honorable court and its rules of practice and the laws of the land require, and it prays to be hence dismissed, with its reasonable costs in this behalf sustained to be paid to it.

JACOB VANATTA,
Solicitor and of Counsel with the Inhabitants of the Township of Bernards, &c.

A true copy.
[L. S.] S. D. OLIPHANT, *Clerk.*

AUGUST 26TH, 1876.

58 Circuit court of N. J.

THOMAS H. MORRISON ET AL.
vs.
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS ET AL. } On demurrer to bill, &c.

By NIXON, *District Judge:*

The demurrer in this case admits to be true certain facts which the bill of complaint alleges substantially, as follows: that on the 29th of March, 1865, the legislature of the State of New Jersey passed an act chartering the Passaic Valley & Peapack Railroad Company, authorizing said company to lay out and construct a railroad from some point in the county of Union or the county of Essex, & passing thro' the township of Springfield, in the county of Union, into the township of New Providence, & up the Passaic Valley, at or near Baskinridge, in the township of Bernards, in the county of Samerset, & so unto the village of Peapack, in the township of Bedminister, in the said county of Somerset; that the
59 incorporators therein named subsequently opened books & received subscriptions for the stock, & that the subscribers organized themselves into an incorporation by electing a board of directors; that the

said corporation caused to be surveyed & located the route of said railroad, commencing at a point in the county of Union & running up the valley of the Passaic & thro' the Township of Bernards; that on the 9th of April, 1868, the legislature of said State passed an act entitled "An act to authorize certain towns in the counties of Somerset, Essex, & Union to issue bonds & take stock in the Passaic Valley & Peapack Railroad Company; that, pursuant to the last recited act, twelve or more freeholders of the township of Bernards, in the county of Somerset, made application to the circuit the court of said county for the appointment of those freeholders, residents of said township, to carry into effect the purposes & provisions of the said act, & that John H. Anderson, Oliver R. Stelle, & John Guerin, were duly appointed; that said commissioners entered into a bond to the said township, with approved sureties, for the faithful discharge of their duties, which bond was deposited with the clerk of the township; that the commissioners,
60 in the month of December, 1868, filed in the clerk's office of the county of Somerset three paper writings, annexed to each other, purporting to be signed by divers tax-payers of the Township of Bernards, to which was attached affidavits verifying the same, & certifying that the persons so signing were a majority of the tax payers of the township, & represented a majority of the landed property appearing upon the last assessment roll of said township for the year 1867, and that the purport of said paper writings so signed & filed was that the persons signing the same thereby consented that the said commissioners might, under the provisions of the law, borrow, on the faith & credit of the township, & execute bonds for, $130,000, which money was to be invested in the stock of the Passaic Valley & Peapack Railroad Company, & that the commissioners might exercise full & complete powers for the township, to carry into effect the purposes & provisions of the said act; that a certified copy of said consent, under the hand & seal of the county clerk, was afterwards filed with the clerk of the Township of Bernards; that on the 1st of September, 1869, the said commissioners caused to be filed in the office
61 of the clerk of the county of Somerset three other paper writings, of the same tenor & effect of these last mentioned, except that the amount of bonds to be issued was limited to $127,000, the same being certified & authenticated as aforesaid, & a copy thereof duly filed with the clerk of said township; that afterwards, & before January 1, 1870, the same commissioners, acting in pursuance of the authority of the said consent papers, subscribed for 2,540 shares, of the par value of 50 dollars each, of the capital stock of the said railroad company, the same to be paid for in instalments, as called for by the directors, the par value of which amounted to $127,000, which sum did not exceed ten per cent. of the value of the real estate of said township as it appeared upon the assessment-roll for 1867, & that about the 1st of January, 1869, they caused to be prepared divers bonds of the denominations of $1,000, $500, & $100 each, respectively, & amounting in the aggregate to the sum of $127,000, with semi-annual interest coupons annexed thereto at 7 per cent., & providing for the payment of the principal at various dates, ranging from six years to twenty-five years, & not longer from date, & that the form of
62 each of said bonds was as follows:

No. .] UNITED STATES OF AMERICA. [$

TOWNSHIP OF BERNARDS, SOMERSET COUNTY, STATE OF NEW JERSEY.

The Inhabitants of the Township of Bernards, in the county of Somerset, acknowledge themselves to owe to bearer five hundred dollars, which sum they promise to pay the holder thereof, at the American Exchange National Bank in the city of New York, twenty-three years after the date thereof and interest thereon at the rate of 7 per cent. per annum, payable semi-annually on the first days of July & January in each year until the principal sum be paid, on presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred & twenty-seven thousand dollars, issued on the faith & credit of the said township in pursuance of an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, & Union to issue bonds & take stock in the Passaic Valley & Peapack Railroad Company," approved April 9, 1868.

In testimony whereof the undersigned, commissioners of the said Township of Bernards, in the county of Somerset, to carry into effect
63 the purposes & provisions of the said act, duly appointed, commissioned, & sworn, have hereunto set our hands & seals the first day of January, 1869.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

Registered in the county clerk's office.

WILLIAM ROSS, JR.,
County clerk.

Coupons annexed.

$17.50.

The Inhabitants of the Township of Bernards, in the county of Somerset, will pay to bearer, at the American Exchange Nat. Bank in the city of New York, seventeen $\frac{50}{100}$ on the first day of January, 1889, for six months' interest on bond No. .

JOHN H. ANDERSON,
OLIVER R. STELLE,
JOHN GUERIN,
Commis.

That each of said bonds was duly registered in the office of the clerk of the county of Somerset, & was signed by & in the proper handwriting of the said commissioners; that they were negotiated and disposed of by the said commissioners in open market & for money paid by various persons therefore, and with the proceeds thereof the commissioners paid
64 to the said railroad company $127,000 for the subscription of the

township for 2,540 shares of the capital stock of said company; that afterwards, in the year 1870, a certificate of 2,540 shares of the said stock was duly issued to the inhabitants of the township of Bernards & was delivered to the said commissioners, who have ever since held it & voted on the same at all meetings of the stockholders, & enjoyed all the benefits of ownership.

That the said railroad company during the years 1869 & 1870 caused to be built & put in operation a railroad leading from a point in the line of the Morris & Essex Railroad near Summit, in the county of Union, & extending into the Township of Bernards, in the county of Somerset, entering the same at a point about two & one-half miles in a southeasterly direction from the village of Bernardsville, in said county, a distance of about five miles in said county, the said road having a switch connexion with the Morris & Essex Railroad at the point near Summit, and that for the past three years regular passenger & freight trains have been run over the Passaic Valley & Peapack Railroad daily from & to the said village of Bernardsville to Summit, & thence over the Morris & Essex Rail-
65 road, thro' Newark, to the city of New York, & that the Inhabitants of the Township of Bernards have derived great benefit therefrom, the taxable property having been increased thereby at least twenty per cent.; that the said railroad company, after completing the road from Bernardsville to the point near Summit, proceeded with the work of grading & excavating for a continuation thereof to the city of Newark, and expended a large sum of money thereon, & nearly completed the grading for about six miles from Summit to the city of Newark when the work stopped in consequence of the financial revolution of 1873. That about the 15th of February, 1870, the legislature of New Jersey changed the name of the Passaic Valley & Peapack Railroad Company, without any change, nevertheless, of corporate rights, powers, & privileges; and that about 1872 one Asa Packer & others, who were largely interested in the Lehigh Valley Railroad Company, became desirous of procuring a charter to construct a railroad across New Jersey from the Delaware River to New York, in order to form a continuation of the said Lehigh Valley Road across said State, & with that view obtained control of the majority of the
66 stock of said Passaic Valley & Peapack or New Jersey West Line Railroad Company, voted themselves into the office, & assumed the control thereof; that the aforesaid commissioners assisted the said Packer and his associates in their project, & voted according to their wishes at all meetings of stockholders on an agreement with him & his associates that he and they should take from the township its stock in the said railroad & pay off the bonds issued by them, or indemnify the township against their payment.

That early in 1873 one Benjamin F. Beekman, a wealthy capitalist, became desirous of obtaining the control for himself & others associated with him of the capital stock & direction of the said railroad, & for that purpose applied to said Anderson, Stelle, & Guerin for their influence & votes in stockholders' meetings in that behalf; & thereupon an agreement & undertaking in writing under seal entered into by said Beekman with the Township of Bernards, by which Beekman agreed & undertook for a good & valuable consideration to indemnify & save harmless the said township against the payment of the principal & arears of interest &

67 coupons due & to grow due in all of said bonds, & delivered the same to the commissioners, & that said agreement furnishes complete indemnity to the township against the said bonds, &, in effect, assumes their payment; that afterwards & during the year 1873 the commissioners sold to Beekman 88 shares of the capital stock of said railroad of the par value of $48,400, & received in payment therefor an equal amount of bonds so issued by them at their par value; that said Beekman made an effort to complete said railroad from Summit to Newark, & failed; and that in February, 1875, he departed this life, have first made & published his last will & testament, whereby he appointed Catherine A. Beekman, J. Reeve Vanderveer, & William Larned executors thereof, by whom the said will was afterwards proved, as well in New York as in New Jersey, & letters of probate were duly issued thereon by the surrogate of the county of Union to said executors; that the complainants previous to the 5th day of May, 1874, became, by purchase in open market for their then market price, which they then & there paid, & were, & still are, the lawful owners & holders of divers of the said bonds so issued by

68 the said commissioners, of the tenor & effect herein before set forth, amounting to $28,100; that each of said bonds was duly registered & issued by the said commissioners for value paid in open market as aforesaid, & that the complainants are the true & actual holders of the same; that The township of Bernards neglecting to pay the interest coupons due on said bonds since January 1, 1871, the complainants (jointly with Thomas A. Morrison, now deceased), on the 5th day of May, 1874, commenced an action at law in a plea of debt in the court against the township the arrears of interest.

That a declaration was duly filed therein, to which the township demurred, and said demurrer being overruled, the said township thereupon, by leave of the court, ple'd a plea, setting up as a defense to said suit that the several bonds held by the complainants were not sealed by the said commissioners, & were not the deed of the township; & complainants admit that, on inspecting the said bonds, altho' each of them, in the attestation clause thereof, declares that it has been sealed by the said commissioners, & each of them is signed on the proper handwriting of the

69 commissioners, it appears, in point of fact, that no seals are found thereon; that they had been taken & held by complainants without knowledge that any such defect existed; that the omission to seal said bonds was a mere mistake on the part of said commissioners, in pursuance of the power & authority in them for that purpose reposed & in good faith; that the Township of Bernards had received the full benefit & consideration therefor contemplated by law, & that the failure to affix seals thereto was an oversight & accidental omission, contrary to the intention & understanding of the parties to said bonds; that it is inequitable & contrary to good conscience for the township to set up such a defense, & that the complainants, as bona fide holders & bearers of the same for a valuable consideration paid, are entitled in equity to have said several bonds held, treated, & considered to be as valid & effectual in law as if the same had been actually sealed by said commissioners before being issued, & are entitled to have the same reformed by actually affixing thereto at this time the seals of said commissioners.

70 The bill then prays that the said bonds so held by the complainants may be reformed as aforesaid, & that the Inhabitants of the Township of Bernards & the said Oliver R. Stelle & John Guerin, *in* one or some of them, may be decreed & directed by the court to affix to said bonds, opposite the signature of John H. Anderson, Oliver R. Stelle, & John Guerin, their seals or scrolls, or other devises in the nature of, & equivalent in law, to seals; & that it may be declared & decreed by this court that the said bonds shall at all times & in all places & for all purposes be held, deemed, & taken to be valid & effectual in law in all respects the same & to the same extent as if the same had been actually sealed by the said commissioners before the issuing the same, and that the said The Inhabitants of the Township of Bernards may be perpetually enjoined & restrained by the decree of the court from setting up, alleging, or pretending as a defence in said suit at law so brought by the complainants in the court, or in any other suit at any other time hereafter to be brought by complainants in any court, to recover the principal or interest,
71 or any part thereof, due or to grow due on said bonds, that the said bonds, or any of them, were not actually sealed by said commissioners before being issued by them, or that said bonds are not the deed of the said township.

The counsel for the executors of Benjamin F. Beekman, dec., on the argument, insisted:

1. That the bill should be dismissed as to them, because they were not proper parties to the said suit.

No relief is prayed for against them. It is to be inferred from the allegations of the bill of complaint that the only reason why they are made parties is because the estate of Beekman is interested in the result, & hence ought to have the opportunity to set up a defence against a decree which, if favorable to the complainants, may be used hereafter to fix a liability upon the testator's estate. These allegations are, in substance, that Beekman, in the year 1873, being desirous of getting the direction & management of the Passaic Valley & Peapack Railroad corporation, & to this end to wield the influence which resulted from the control of the stock held by the Township of Bernards, agreed with the commis-
72 sioners, for a valuable consideration, to indemnify & save harm' the township from the payment of any of the bonds issued by them, & the interest coupons due & to grow due thereon. It is not claimed that the complainants were in any wise party or privy to the agreement, but the obvious suggestions is that a court of equity would be loath to make a decree touching the validity of the bonds, or correcting any mistake in the mode of their issue, without opening the doors of the litigation to all parties to be effected by the decree.

Recognizing the fundamental principal of equity practice, that all persons should be before the court, either as plaintiffs or defendants, where interests may be affected by the proposed decree, or whose concurrence may be necessary to a complete arrangement, why should the representatives of Beekman's estate complain or demur because the bill alleges that they have some concern with the subject-matter of the controversy, & affords them the chance of either disclaiming or depending?

The 54th rule of practice in the courts of equity of the United States makes ample provision for such a case. It says that where no account,

payment, conveyance, or other direct relief is sought against a
73 party to a suit, not being an infant, the party, upon service of the subpœna, need not appear & answer the bill unless the plaintiff specially requires him so to do, but he may appear & answer at his option; and if he does not appear & answer, he shall be bound by all the proceedings in the causes. Of the plaintiff shall require him to appear & answer, he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct. These defendants may exercise their judgment whether they will answer or not. There is no constraint upon them; no decree can be entered against them upon the merits or for costs.

The same question, in principle, was considered by the late Chancellor Zabriskie in the case Dorsheimer vs. Rorback, 8 C. E. G., 46. These the sureties in an administrator's bond were joined with the representative of a deceased administrator in an action by one of the next of kin for a distributive share of the estate. It was held on demurrer, that no relief could be had in such a proceeding against the sureties, but nevertheless that they were proper, although not necessary, parties to the suit. In assign-
74 ing his reasons why he considered them proper parties the learned chancellor said: "They are interested in the result; they may be called upon by suit at law for the amount, which may be recovered in this suit against the representative of their principal. They will be bound by the decree made in the suit as to the amount due to the complainant, & it is proper that they should have a right to defend, so as to prevent any collision between the complainant & the principal & to protect themselves from any neglect of the principal to make proper defence. The demurrer, therefore, being general must be overruled, as the defendants are proper parties, altho' no decree for the payment of the share by them can be made in it."

Such reasoning is applicable to the present case, & the above ground of demurrer is not sustained.

2. Turning to the merits of the case, other grounds of demurrer were ably argued by the counsel of the demurring defendants, all of which may be briefly comprehended in on' proposition, to wit, that the bill does not disclose a case where a court of equity, acting within the ordinary
75 limits of its jurisdiction in matters of this kind, has the power to grant the relief prayed for.

The demurrer admits the allegation of the bill of complaint, that the Township of Bernards, acting under the authority of the legislature of the State, & through its duly authorized commissioners as its agents, subscribed for 2,540 shares of the capital stock of the Passaic Valley & Peapack Railroad Company, & issued their bonds for $127,000, purporting to be under the hands & seals of the commissioners, which were sold in open market for a valuable consideration to various purchasers, and that the money realized on the sale was appropriated to the payment of the said subscription; and that this inadvertence & oversight, the actual affixing to the bonds of the seal of the commissioners, was overlooked & omitted.

The complainants claim that upon this statement of facts they are entitled to the aid of the court, in the exercise of its equity powers, to restrain the township from setting up the legal defence of the want of seals to any

suit "brought or to be brought at law for the payment of the
76 bonds or the interest coupons; and, as auxillary to this, to have the decree of the court for the reformation of the bonds held by the complainants by the affixing of seals, as the parties thereto understood & intended.

Courts of equity, in a great variety of cases, are accustomed to act as auxillary to the administration of justice in other courts. They will prevent a party from setting up an inequitable or unconscientious defence at law, or from interposing impediments to the just right of the other party. (2 Sto. Eq., § 903.)

There are exceptions to the rule; as, for instance, they will not interfere when the parties stand on equal equities; nor will they take away a legal defence in a case of contract or instrument not founded on a valuable consideration.

They will also supply any defect in the execution of a power, whether the defect arises from mistake, accident, or ignorance. Wherever the intention to execute a power is manifest, but the execution is defective,
77 or it has not been executed according to the terms or in the form prescribed, they will correct the mistake or supply the defect in favor of parties for whom the person instrusted with the execution of the power is under a moral or legal obligation to provide by its execution.

But in all cases of relief of this sort the parties asking for it must stand upon some equity superior to that of the party against whom he asked it. The court is silent & passive where the equities are equal, and the relief is ordinarily limited to the defective execution of a power created by the party, & does not include the defective execution of a power created by law. (1 Sto. Eq., § 96, § 177; 1 Sto. R., 487, Bright vs. Boyd.)

Applying these familiar principles of equity jurisdiction to the subject-matter under consideration, does the case presented fall within the ordinary rule, or the exceptions?

The complainants come as purchasers, and not as volunteers.
78 They have paid a valuable consideration for certain evidences of indebtedness, and when they demand the money due thereon according to the contract, intended & understood by both parties, they are met with refusal to pay on the ground that the agents of the obligers in the execution of the bonds, did not make a legal instrument by formal'y annexing their seals. It is acknowledged to have been an oversight or mistake. Does this power exist in the court to restrain a defence so manifestly inequitable & to correct the mistake by amending the instrument?

1. The counsel for the demurrants say that it does not, because the power to issue the bonds was created by statute, and if it has been defectively executed the bonds are void, and there is no remedy, as equity only aids the defective execution of a power created by the parties.

It is conceded that municipal corporations are possessed of limited powers. They exist only in the atmosphere of the jurisdiction & by virtue of the law which gives them being, and can only do what the law authorizes in express terms or by necessary implication.

79 But the authority of the township to issue the bonds is not derived from the act of the legislature, which is more properly a regulation of the conditions & mode by which the act is to be performed. The authority is found in the written consent of a majority of the tax-payers of the township, ascertained according to the mode prescribed. It is this

consent which creates the power or authority, & that is the act of one of the parties. The consent being given, the commissioners are not trustees executing a power, but mere agents of the corporation, clothed with the performance of special duties, among which are the signing & sealing of the bonds for the township. These bonds were the contract between the parties. They were defectively executed; one of the parties has received value for them, & the court is asked to see to it that such party shall not now take advantage of its own mistake whereby the other party which paid the consideration loses the promised security.

This view of the case is strengthened by the further consideration
80 that if the law of the legislature had been entirely silent in regard to the issue of the bonds the right to issue them would have existed as the lawful result of the power to subscribe for the stock of the railroad company. If the law had vested in the township the naked authority to make a subscription of $127,000 for the stock, absolutely or conditionally, it would have followed, as incidental to such express grant, that when the subscription was completed according to the act the township, without further legislation, might issue bonds, borrow money, or impose taxes for its payment. Such was the doctrine of the Supreme Court in the case of Seybert *in* the City of Pittsburg (1 Wall., 272), affirming the decision of the supreme court of Pennsylvania in Reinboth *as* the Common Council, 41 Penn., 278; and also in Rogers vs. Burlington, Id. 654.

The demurrer cannot be sustained on this ground.

2. But it is further suggested by the counsel for the demurrants that the acceptance of them bonds, without seals, was negligence of so gross a character on the part of the complainants that a court of equity ought
81 not to give it aid in correcting the mistake. But *in* this a case where the principle of negligence can be envoked? Observe, the demurrer does not deny but admits the allegations of the bill, that the defendant township has taken the money of the complainants for its bonds, & now declines to pay, not because value has not been received, but because its agents casually omitted to affix their seals in their execution. It is not pretended that there was no intent or understanding that the seals should be affixed; and where the intention is manifest it is only the ordinary exercise of equity jurisdiction to relieve against mistakes in agreements. (Wiser vs. Blatchly, 1 John. Ch., 607.) In this case Ch. Kent enforced a bond given by a surety for the guardian of an infant, which the surrogate had taken in the name of the people, altho' the statute expressly required that it should be taken in the name of the infant. See, also, Langley vs. Brown, 2 Ait., 203; Joynes vs. Statham, 3 Id., 388; & Henkle vs. Insurance Co., 1 Ver. Sen., 318; Cockrill vs. Cholmly, 1 Russ. & Mylno, 424, where the master of the rolls admits that courts of equity will supply a defect in the execution of a power which consists in the want of some circumstance required in the manner of execution, as
82 the want of a seal or of a sufficient number of witnesses, or where it has been executed by will instead of a deed.

Mr. Justice Washington, in delivering the opinion of the supreme court in the long-contended case of Hunt vs. Rousmanaires, adm'r, makes some observations on the subject of equity jurisdiction so pertinent to the case under consideration that we cannot forbear quoting them:

"There are" he says, "certain principles of equity applicable to this

question" i. e., how far the courts may substitute new methods to give effect to contracts which the parties had made & which has failed, "which, as general principles, we hold to be incontrovertible. The first is, that where an instrument is drawn & executed which professes or is intended to carry into execution an agreement, whether in writing or by parol previously entered into, but which, by mistake of the draughtsman, either as to fact or law, does not fulfill, or which violates the manifest intention of the parties to the agreement, equity will correct the mistake, so as to produce a conformity of the instrument to the agreement.

83 "The reason is obvious. The execution of agreement fairly & legally entered into is one of the peculiar branches of equity jurisdiction; and if the instrument which is intended to execute the agreement be, from any cause, insufficient for that purpose, the agreement remains as much unexecuted as if one of the parties had refused altogether to comply with his engagement; and a court of equity will, in the exercise of its jurisdiction, afford relief in the one case as well as in the other by compelling delinquent party fully to perform his agreement according to the terms of it & to the manifest intention of the parties, so if the mistake exist, not in the instrument which is intended to give effect to the agreement, but in the agreement itself, & is clearly proved to have been the result of ignorance of some material fact, a court of equity will in general grant relief, according to the nature of the particular case in which it is sought."

The demurrer in this case is overruled, & the same order will be made in the case of Cyrus Curtiss vs. The Inhabitants of the Township of Bernards, in which the same questions arise & the same reason is applicable.

Filed May 2, 1877.

84 United States circuit court, district of New Jersey.

BETWEEN THOMAS H. MORRISON & ALS., complainants, *and* THE INHABITANTS OF THE TOWNSHIP OF BERNARDS & als., defendants.	On bill, &c.

This cause coming on to be heard upon demurrer by the defendants to the bill of complaint, and having been discussed before the court by Thomas N. McCorter, of counsel for said defendants, and Cortlandt Parker, of counsel for said complainants, and the court having duly considered the matters involved, and being of opinion that complainants are entitled to the relief prayed for by their bill, it is now, on this fifteenth day of May, one thousand eight hundred and seventy-seven, ordered and decreed that said demurrer be, and the same is hereby, overruled with costs. It is further ordered that said defendants have liberty to file their plea or answer to said bill of complaint within forty days herefrom, on motion of Cortlandt & R. Wayne Parker, solicitors, and of counsel with complainants.

JNO. T. NIXON, *J.*

Filed May 15, 1877.

85 *Answer of Beekman's executors.—Filed February 5, 1878.*

The answer of Catherine Adelaide Beekman, executrix, and J. Reeve Vanderveer and William Z. Larned, executors of Benjamin F. Beekman, deceased, to the bill of complaint of Thomas H. Morrison and Gardiner S. Hutchinson, survivors, &c., complainants.

These defendants, now and at all times hereafter saving and reserving to themselves all manner of benefit and advantage of exception to the many errors, uncertainties, and defects in the said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as they are advised it is material for them to make answer unto, they answer and say that they do not know whether the said complainants are or are not citizens and residents of the State of New York.

And they, further answering, say they admit the allegations contained in the first and second paragraphs of said bill of complaint, but pray leave to refer themselves for greater certainty to the said act of the legislature entitled "An act to charter the Passaic Valley and Peapack Railroad Company."

They also admit the allegations contained in the third paragraph of said bill, but in like manner pray leave to refer to the law therein referred to for greater certainty as to its terms and provisions. They also answer and say that they are unable to state whether the allegations contained in the fourth and fifth paragraphs of the said bill of complaint are true or not. They have no knowledge on the subject except that derived from the said bill of complaint, and they leave the complainants to make such proof thereof as may be in their power, except that these defendants believe it to be true that some such act of the legislature of New Jersey was passed as is stated in said fourth paragraph, and they pray leave to refer themselves to the said act when produced for greater certainty as to its terms and provisions.

86 And they further say that they have no knowledge of the truth of the allegations contained in the sixth paragraph of said bill, except as they are informed thereof by the said bill itself; that they are strangers to all such proceedings, and never had any knowledge concerning them, and leave the complainants to make such proof thereof as may be in their power; but they further say that they are advised, and they respectfully submit to this court, that by the constitution of the State of New Jersey the said Vancleve Dalrimple, as judge of the circuit court, had no lawful power or authority to appoint John H. Anderson, Oliver R. Stelle, and John Geurin to be commissioners of the said township of Bernards to carry into effect the provisions of said act, and that such appointment, if any was made, as alleged in said sixth paragraph, was entirely null and void, and could not and did not confer any power on the persons so said to have been appointed commissioners under said act.

And these defendants, further answering, say that they have no knowledge, except from the said bill, of the truth of the allegations contained in the seventh, eighth, ninth, tenth, eleventh and twelfth paragraphs of the said bill of complaint; these defendants are strangers to all such matters, and leave the complainants to make such proof thereof as may be in their power.

And these defendants also say that they are unable to answer as to the

truth of the thirteenth, fourteenth, and fifteenth paragraphs in said bill; that they have no knowledge or opinion on the subject except that derived from the said bill of complaint, and they leave the complainants to make such proof thereof as may be in their power.

And these defendants, further answering, say that they do not know and cannot answer whether the form of said alleged bond, as set forth in the fourteenth paragraph of said bill of complaint and of the coupon thereto annexed, are or are not correctly set forth in said bill, but they pray leave to refer themselves to the said bonds alleged to have been issued by said commissioners on behalf of said township of Bernards for greater certainty as to their terms and conditions, nor have these defendants

87 any knowledge of the truth of the allegations contained in the sixteenth paragraph of said bill.

And these defendants, further answering, deny, on information and belief, the allegations in the seventeenth paragraph of said bill, that the said commissioners took measures to negotiate and dispose of said bonds so alleged to have been prepared and signed by them, and to have been registered in the clerk's office, or that they did negotiate and dispose of the same from time to time, except, as these defendants have been informed and charge the truth to be, that all of the bonds which were issued or attempted to be issued by the said commissioners in the name and on behalf of said township of Bernards were by said commissioners delivered over to the said the Passiac Valley and Peapack Railroad Company, then called the New Jersey West Line Railroad Company, in exchange for stock of said company; and they deny, on like information and belief, that any of the said alleged bonds were negotiated or disposed of by said commissioners in open market, or that with the proceeds thereof the said commissioners paid to the said the Passiac Valley and Peapack Railroad Company the sum mentioned in said sixteenth paragraph, or any sum of money whatever; nor do these defendants know whether it is true or not, as stated in the eighteenth paragraph in said bill, that at the time therein stated, or any other time, a certificate of twenty-five hundred and forty shares of the capital stock was issued under the corporate seal of the same, and signed by its president and secretary, to the said The Inhabitants of the Township of Bernards, in the county of Somerset, nor what was contained in said certificate, if any was issued, but they leave the complainants to make such proof of said allegations as may be in their power, except that they believe it to be true that the said commissioners did, at any time, and may yet, for anything they know to the contrary, hold some of the stock of said company, and have, either in person or by proxy, voted on the same at some of the meetings of the stockholders, but they deny that the said township at any time enjoyed or derived any benefit whatever from the ownership of said stock.

88 And these defendants, further answering, admit it to be true that the said railroad company did at some time, but the precise time these defendants cannot answer, cause to be built and put in operation a portion of the railroad authorized by said act, leading from a point on the Morris and Essex Railroad near Summit, in the county of Union, through the township of New Providence and the township of Passaic, in the county of Morris, and extending into the said township of Bernards, and that the railroad so constructed had a connection with the track of the Morris and Essex Railroad at the said point near Summit, and that, for some years

past, one or more trains have been run daily over said railroad between the villages of Bernardsville and Summit aforesaid; but these defendants are informed, and charge the truth to be, that the said railroad was constructed in a very imperfect, hasty, and defective manner; that it never was, to any extent, kept or maintained or repaired by the said railroad company; that very shortly after it was constructed and trains commenced to run upon it the said railroad company became bankrupt and passed into the hands of a receiver, appointed by the court of chancery of the State of New Jersey, by whom the said railroad has been since, for a time, operated, and since then said railroad has been surrendered by said receiver to the mortgagees under a mortgage of three million dollars, made by said railroad company, who now operate the same; that the earnings of said railroad were insufficient to pay the expenses of running and operating the same; that the said railroad thus constructed was of no value whatever to the Inhabitants of the Township of Bernards, and they deny the allegation in said bill that the taxable property of said township was greatly increased thereby.

And they deny the further allegation in said bill that the increase of ratables in said township resulting on the building and operating of said road has been twenty per cent., or after any other rate or any other sum.

And these defendants, in further answering, admit it to be true that said railroad company, while they were constructing said road from Bernardsville to the point near Summit aforesaid, were also proceeding with the work of grading and other labor for a continuation thereof to the
89 city of Newark, and did expend some money thereon; but they deny that the grading of the same for a distance of six miles was nearly completed when the said work was brought to a stand-still by the financial reverses of the year eighteen hundred and seventy-three, and by the bankruptcy of said company; and they aver that the money expended in said grading, excavating, and in the trestle works and other structures designed to construct the track was entirely wasted and lost, and of no use or value whatever either to the said company, to the inhabitants of said township, or to any other persons.

They admit to be true the allegations contained in paragraph twenty-first in said bill.

And these defendants, further answering, state that they believe it to be true, as stated in said bill, that Asa Packer and other persons interested in the Lehigh Valley Railroad Company did, for some purpose, obtain the control of the majority of the stock of the said the Passaic Valley and Peapack Railroad Company, and did procure themselves to be appointed officers and assume the control thereof; and these defendants believe it to be true that the said commissioners assisted said Packer and his said associates in their project; but they do not know whether they voted according to their wishes, or what agreement they had, if any, with said Packer; but they deny that the said Packer or his associates ever agreed to take from said township its stock in said railroad, or to pay the said bonds so alleged to have been issued, or in any manner to indemnify said township against their payment. They believe it to be true that said Packer and his associates were men of considerable means, but they do not know how far they were responsible for any undertaking, if they entered into any such undertaking as is stated in said bill.

And these defendants, further answering, say that they believe it to be

true that the testator of these defendants, Benjamin F. Beekman, did become desirous of obtaining a controlling interest for himself and other persons connected with him in the capital stock of the said West Line Railroad Company; but these defendants do not know what applications were made, if any, by said Benjamin F. Beekman to said Anderson, Stelle, and Guerin, each, for their influence and votes as stockholders in that behalf; and they admit it to be true that an agreement in writing was entered into between said Benjamin F. Beekman and the said commissioners, of which agreement a copy is as follows, that is to say:

We, Oliver R. Stelle and John Guerin, two of the commissioners appointed for the township of Bernards, in the county of Somerset, State of New Jersey, under an act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April ninth, eighteen hundred and sixty-eight, for and in consideration of one dollar to us paid by Benjamin F. Beekman, of the city of New York, do promise and agree to assign, transfer, and set over unto said Benjamin F. Beekman, his executors, administrators, and assigns, all and any part of the capital stock of the Passaic Valley and Peapack Railroad Company which, within six months from this date, may be paid for to us or to any of said commissioners, in bonds of the Inhabitants of the Township of Bernards, in the county of Somerset, issued or purporting to have been issued under and pursuant to the act above mentioned, at par; that is, for every one hundred dollars of principal of said bonds legally transferred to said commissioners we will transfer to said Beekman, his executors, administrators, and assigns two shares of the capital stock of said railroad company standing in the name of said township. The number of shares of stock of said railroad company standing in the name of said township is twenty-five hundred and forty, of the par value of fifty dollars each, amounting in all, at par, to one hundred and twenty-seven thousand dollars.

In consideration of the agreement aforesaid, and for the further consideration that said two commissioners have given to said Beekman a proxy to vote upon said stock at the next annual election of said company, said Beekman doth agree with said commissioners, within twenty days
91 of the date hereof, if the election hereinafter mentioned shall result as hereinafter mentioned, to deliver to said commissioners, upon the terms aforesaid, so many of said bonds at par as will amount to seven thousand dollars at least, in exchange for an equal amount at par of said stock.

And if at the annual election of said company such board of directors as said Beekman shall nominate or cause to be nominated or shall vote for shall be elected, or a majority of his nominees or of the persons he shall vote for shall be elected, or a majority of his nominees or of the persons he shall vote for as directors of said company, (now called the New Jersey West Line Company) shall be elected, then and in that event said Beekman doth covenant and promise and agree with the three commissioners of said township, and with every one of them, and with the said town, to indemnify and save harmless and to keep harmless and fully indemnified as well the said township as the said commissioners, and each and every of them, from

the payment of any of the principal or interest of the said township bonds, and of every of them, and from all costs, charges, expenses, counsel fees, and other charges which may be incurred on or by means of any suit or suits, proceeding or proceedings, commenced or hereafter to be commenced, against said township for the recovery of any of the principal of or interest on said bonds or on any of them, or against the said commissioners, or any of them, for anything they have done or omitted to do in respect to said stock or said bonds, or in respect of their agreement.

And it is further agreed by the said commissioners, that while said Beekman shall keep and perform this agreement on his part, the proxies so as aforesaid given to him shall not be revoked and shall be irrevocable.

B. F. BEEKMAN.

Witness:
W. Z. LARNED.
Dated June 3d, 1872, New York.

And these defendants say that the agreement above set forth was signed by the said Benjamin F. Beekman, and one part thereof was delivered by him to the said commissioners, and that he received from the said commissioners another part of said agreement similar to that above set
92 forth, signed by the said commissioners, but these defendants deny that the said agreement furnished whole and complete indemnity to said township against said bonds, or that it assumes their payment, or that it is at this time or ever was a good, valid, or binding agreement. And they further deny that said Benjamin F. Beekman ever made any other contract respecting said railroad with the said commissioners.

And these defendants, further answering, say that they are advised and respectfully submit to the court that by the act under which it was claimed that said commissioners were appointed it was made their duty to vote on said stock at the meeting of the stockholders and election of directors, and that they had no lawful right or power to bargain away or delegate that duty by an irrevocable proxy, and that said contract was illegal, against public policy, and void.

And they also say that although the said Benjamin F. Beekman did in all things perform his contract, nevertheless the said commissioners, at the stockholders' meeting held in the following year, after the execution of said contract, namely, in June, eighteen hundred and seventy-three, without the consent and against the will of said Benjamin F. Beekman, revoked said proxy and refused to allow the said Benjamin F. Beekman to vote thereon, or to vote for such board of directors as he desired, but said proxy had ever since been revoked, and the said Benjamin F. Beekman deprived of all benefit and advantage under the same, or under said contract, by reason whereof said commissioners forfeited all right and equity on their part to call on said Benjamin F. Beekman or his executors further to keep or perform said contract, but the same speedily became and still is as to him and them null and void.

And these defendants have no knowledge of the truth of the allegations contained in the twenty-third paragraph of said bill, and leave the complainants to make such proof thereof as may be in their power.

And these defendants admit all the allegations of the twenty-fourth paragraph of said bill, except that the estate of said Benjamin F.

93 Beekman, deceased, now in the hands of his said executors, is ample to answer to the said undertaking of the said Benjamin F. Beekman, if he shall be held to oblige the estate of the said Benjamin F. Beekman for the payment of the bonds alleged to have been issued by the said commissioners.

And these defendants, further answering, say that they have no knowledge, except as derived from said bill, whether the said complainants were and are the lawful holders and owners of the bonds alleged to have been issued by said commissioners described in numbers and amounts in the twenty-sixth paragraph in said bill, nor have they any knowledge of the truth of the allegations contained in said twenty-sixth paragraph, except that these defendants are informed and charge the truth to be that as to all or nearly all of said bonds the said complainants are mere trustees of former holders of said bonds, all of which were placed in the hands of said complainants by the holders of said bonds, who were mainly residents of the State of New Jersey, to enable the said complainants to bring a suit in this court, and they deny, on information and belief, that the complainants are bona fide holders or purchasers of any of the said bonds in the twenty-sixth paragraph described for value.

And these defendants further say that they are informed and charge the truth to be that after said bonds were signed by said commissioners they were, as hereinbefore stated, delivered over by said commissioners to the said the New Jersey West Line Railroad Company in exchange for stock of the said company, and that the said bonds were never negotiated or sold by the said railroad company, but were by said railroad company paid over to one Hanford, who entered into a contract with said railroad company for the construction of said road at a very exorbitant price, and in payment thereof agreed to accept and take from the said company the bonds of said township, at the rate of fifty-six cents on the dollar, and that the bonds were so issued by the said railroad company to the said Hanford at that rate, and that such disposition of said bonds was unauthorized by the said act, which provided among other things that the said bonds

94 should not be sold at less than par value, and that the total amount of said bonds should be invested in the stock of said railroad company; whereas by the arrangement aforesaid the said bonds were passed away and negotiated by the said railroad company at only fifty-six cents on the dollar of their par value, and then in payment of a contract for construction at so exorbitant a rate that the actual value received by the said railroad company for the bonds, if the said contract for construction had been carried out, would have been much less than the amount at which they were thus paid out by the said railroad company, and that the whole scheme for disposing of said bonds hereinbefore described between said commissioners and the said railroad company and said contractor was illegal, and that the said bonds never had any lawful existence, and that the said facts, and the illegality of the said bonds, and of the disposition thereof were well known to the complainants at the time they became the holders of said bonds, and was also well known to the persons who held the said bonds before the complainants became the holders of them, and for whose use the complainants now hold them.

And these defendants, on information and belief, deny that any of the interest coupons on said bonds were ever paid by the said township of

Bernards, and they allege the truth to be that if any payment of interest was ever made on such bonds such payment was made by the said railroad company, or by the contractor who entered into the said contract for the construction of the said railroad, and they are informed and believe it to be true that the complainants commenced an action at law in a plea of debt in this court against the said township of Bernards, to recover arrears of interest on said bonds, but they do not know whether said township was duly served with the process of this court, or whether it duly appeared in said action, or what proceedings were had in said cause, except that these defendants have been informed that the said township of Bernards in some manner denied the legality of said bonds, and they are informed and believe it to be true that in said action, in addition to other defences which the inhabitants of said township expected to interpose to said suit, they did rely upon the fact that the said bonds were not sealed by the said commissioners.

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And these defendants deny the allegation in the twenty-eighth paragraph in said bill, that said bonds were taken and held by them without knowledge that any such defect existed; that said omission to seal said instruments was patent and plain upon their face on a mere inspection of said instruments, and if said complainants failed to observe said defect when they became the purchasers of said instruments it was due to their own negligence and carelessness, and these defendants do not know why said commissioners omitted to put seals on said instruments; and they further say that the said act of the legislature under which said instruments were attempted to be issued required them to be under the hands and seals of the company, and they respectfully submit that this court has no power to dispense with such requirement, nor have the said commissioners now any power or authority to add to said bonds, but are in that respect functi officii.

And these defendants deny the allegations contained in said bill, to the effect that it is inequitable, unjust, or contrary to good conscience for the said township to set up as a defence to the payment of said bonds and the coupons thereto annexed the fact that the same were not actually sealed by the said commissioners; and they deny that the said complainants were bona fide holders or bearers of said bonds for a valuable consideration; and these defendants believe it to be true that the inhabitants of said township never derived any benefit whatever from the said bonds; that the stock which the said commissioners received in exchange for said bonds is and always has been utterly worthless, and that no value or legal consideration was ever given for said bonds, and that the said township is not now nor ever was in equity bound to pay the same or any part thereof; and these defendants therefore believe that the said complainants ought not to have a right to have the said bonds reformed by affixing thereto the seals of said commissioners or to have the aid of this court in giving to the said bonds any higher or greater validity than be-

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longed to them when they were so disposed of by the said commissioners; that the said commissioners, in dealing with said bonds, grossly betrayed the trusts that were intended to be conferred upon them by the said act; that the holders of the said bonds, including the complainants, had full knowledge of such abuse of trust, and that they have no equity to collect said bonds out of the inhabitants of said township; but whether

that be true or not these defendants further insist, and charge the truth to be, that at the time Benjamin F. Beekman, the testator of these defendants, entered into the agreement hereinbefore set forth, it was represented to the said Benjamin F. Beekman by said commissioners that the said bonds were of no validity, because they had been issued without seals, and that every person who took such bonds must know by inspection of them that they were defective in that respect, and not in compliance with the act under which they purported to have been issued, and were therefore void, and the fact that the said bonds were so issued without seals was well known to the said Benjamin F. Beekman when he made the agreement of indemnity hereinbefore set forth, and that he would not have made such agreement but for that circumstance, and that as against these defendants it would be grossly inequitable and unjust to make any such change in said bonds, the effect of which would be to impose upon these defendants, as executors of said Benjamin F. Beekman, another higher or greater obligation, or a contract of a different character from that which he entered into at the time he entered into said agreement.

And these defendants, further answering, insist that the defect in said bonds for want of seals was manifest on their face, so that the complainants and every holder thereof prior to them had notice that they were defective in said particular, and they were guilty of such negligence in taking said bonds in that condition as not to entitle them to the relief prayed for in their said bill.

And they respectfully submit to the court that whatever may be right as between the said complainants and the said Inhabitants of the Township of Bernards the liability of these defendants under the contract made by their testator cannot in anywise be increased or enlarged by the action
97 of this court in the premises; that any other matter or thing in said bill alleged not herein expressly and definitely denied, admitted, or avoided is true to the knowledge and belief of these defendants; all which matters and things these defendants are ready to aver, maintain, and prove as this honorable court and its rules of practice and the laws of the land require; and they pray to be hence dismissed with their reasonable costs in this behalf sustained to be paid to them.

McCARTER & KEEN,
Solicitors of Defendants.
THOMAS N. McCARTER,
Of Counsel.

Testimony on part of Complainants.

Testimony on the part of the complainants taken before United States commissioner Samuel Bell, Philadelphia, in accordance with notice served upon defendants, a copy of which is hereto annexed with an acknowledgment of service.

OFFICE OF SAMUEL BELL, ESQ.,
Philadelphia, March 7th, 1879.

Present, Samuel Bell, esq., U. S. commissioner; Cortlandt Parker, esq., for the complainants; Jacob Vanatta, esq., for the defendants.

Mr. Vanatta stated that Mr. Larned, one of the executors of Benjamin F. Beekman, and a defendant in this case, had sent word by him to the

commissioner that he could not attend to-day, and would like to have the right to examine the witnesses produced to-day at a future meeting if it seemed necessary to his clients to exercise that right.

No objection was made by counsel for the complainant.

Counsel for the complainant produces and exhibits before the
98 commissioner sixty-nine original bonds described in the bill of complaint, which bonds are offered in evidence and marked as "Exhibits No. 1 to 69," inclusive.

Counsel for the complainant offers a list of the numbers and amounts of said bonds to be attached to the deposition. This list is marked "Exhibit No. 70," and is as follows:

Numbers 41, 42, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65, each for $1,000; Nos. 109, 110, 111, 113, 130, 131, 142, 143, 144, 145, each for $500; Nos. 160, 162, 163, 169, 171, 183, 210, 214, 215, 216, 217, 222, 223, 227, 228, 229, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 281, 282, 283, 286, 287, 337, 338, 339, 340, 341, each for $100.

WILLIAM PARKER, a witness called on behalf of the complainant, being duly sworn, is examined and says:

By Mr. PARKER:

Q. Where do you live?

A. In Philadelphia.

Q. Your occupation is what?

A. Treasurer of the Delaware River Ship Works, at Chester.

Q. How long have you been in that employment?

A. Something over seven years.

Q. Previous to that were you a broker in the city of New York?

A. I was.

Q. Alone, or in partnership with some one else?

A. I was in partnership the whole time, except the one year; the last year, 1871, I was alone.

Q. With whom were you in partnership?

A. I was in partnership with Mr. Loyal P. Kellogg up to 1870.

Q. And after that time with any one else?

A. He then withdrew and I was in partnership for one year with Samuel Lawrence.

Q. While you were a broker in New York, had you anything to do with the purchase or sale of the bonds that are mentioned in the pleadings in this case, or of any bonds that were purchased by Morrison & Co. and others?

99 A. Yes, sir; I sold Morrison & Hutchinson bonds, and to Delany and other parties.

Q. Have you a list of any bonds given by the township of Bernards which you purchased or sold to these gentlemen?

A. I have a partial list; the book was very large, and I supposed I had cut out all the leaves necessary. This is a partial list (exhibiting several leaves cut from a large book).

Q. The paper you produce——

A. Is a partial list of the bonds I sold of the township of Bernards, Somerset County, and three other townships.

Q. When was this list made?

A. At the time of the sale in 1870.

Q. The paper is taken from your book?

A. Yes, sir; it is the original entry cut from the book.

Q. You did not bring the book?

A. I did not, because it was a large book, and I supposed I had all that would be required.

Q. State in what way these bonds came to be sold by you.

A. These bonds were brought to us by E. Handford & Co., contractors for building this West Line New Jersey Railroad; we called it the West Line Road, and were received by them, as stated to us, in payment of work done on the road, or subscriptions for stock of the road, one or the other or both; they made arrangements with us to sell these bonds for a commission and turn over the proceeds and make advances on the bonds in advance of sale, which we did; in pursuance of that arrangement we sold perhaps $100,000 worth of the bonds of the different townships, more or less—I am not able to say exactly—including this township of Bernards.

Q. What publicity did you give to having these bonds for sale?

A. We gave the publicity that was usual in such cases in New York; we advertised them quite extensively in the New York papers, and, as I recollect, pretty largely in the country papers; and we also issued a circular, which we mailed to parties that we knew; we also had them in our window in Wall street, that parties might see them.

100 Q. Your office was in Wall street?

A. Yes; No. 1 Wall street.

Q. At what rate were they sold?

A. As I recollect the bonds were sold mostly at eighty cents on the dollar; my impression is my partner sold a few hundred bonds that we got a larger price for; the amount of bonds sold affected the price in some cases.

Q. How did these prices compare with the highest market price of the bonds at that time—did you get the highest market price for the bonds at the time?

A. We got the best price we could for them.

Q. What bonds, if any, of those mentioned in this suit did you sell, if to any one? I hand you a list of all the bonds mentioned in the bill of complaint.

A. I will give you the numbers of the bonds I sold to Morrison & Hutchinson.

Q. Do so.

A. 51, 52, 53, 54, 55, 56, 57, 58, 61; these are all for $1,000 each, making $9,000, and Nos. 130 and 131 of $500 each.

Q. Can you look at the list and see if you sold any others, and to whom?

A. Yes, sir; I sold Nos. 41 and 42 for $1,000 each to James E. Clark, of Philadelphia.

Q. Did you sell Nos. 49 and 50—look at July 27th, 1870?

A. I am not able to say; I have not them on this list.

Q. Have you the entry of July 27th, 1870?

A. Yes, sir; that is the day I sold Morrison & Hutchinson that $10,000.

Q. Have you not Nos. 49 and 50 for $1,000 each?

A. Yes, sir.

Q. Whom did you sell them to?

A. I am not able to tell you.

Q. Did you sell them?

A. Yes, sir; I sold them on the 7th day of July; I have only one side of the page of the sheet.

Q. Did you sell bonds Nos. 62, 63, 64, 65, of $1,000 each; look at June 23d, 1870?

101 A. Yes, sir; June 23d, 1870, I sold Nos. 62 to 65, inclusive—$4,000.

Q. Do you remember to whom?

A. I do not; the other side of the page of my book would show, but I did not bring it, unfortunately.

Q. Did you sell Nos. 109, 110, 111, 113, for $500 each?

A. I find Nos. 110 and 111 sold on the 23d of August for $500 each, and No. 109 for $500.

Q. Do you find No. 113?

A. I do not.

Q. Did you sell Nos. 142, 143, 144, 145; look at June 18th, 1870?

A. I sold Nos. 142, 143, 144, 145, $500 each, June 23d, 1870, according to my book.

Q. To whom were they sold?

A. I am not able to say.

Q. Did you sell Nos. 160, 162, 163, 169, 171 of $100 each?

A. Nos. 160, 162, 163, of $100 each, I sold on the 15th day of July; I do not know to whom.

Q. Did you sell Nos. 169 and 171?

A. Yes, sir; Nos. 169 and 171, of $100 each, I sold on the 25th day of July; I am not able to say to whom without the balance of my book.

Q. Have you any recollection of No. 183 in the summer of 1870?

A. No, sir; I have not it on this sheet.

Q. See if you have any one hundred dollar bonds mentioned as having been sold in the summer of 1870, and numbered 210, 214, 215, 216, 217, 222, 223, 227, 228, 229, 265, 266, 267, 268, 269, 270, 271, 272, 273, 244, 275, 276, 277, 278, 279, 281, 282, 283, 286, 287.

A. I have all those that were called, sold on the 9th of July; that makes $2,000 at $100 each; I am not able to say to whom I sold them without the other half of my sheet.

Q. Look if you sold in the fall of 1870 bonds for $100 each, Nos. 337, 338, 339, 340, 341.

A. No, sir; I do not find them here. I have not records of anything beyond the 3d of September.

102 Q. Will you look at the bonds which have been exhibited in this case and state whether they are those which you sold, as stated by you?

A. I identify Nos. 41 and 42 as sold to Mr. James E. Clark; Nos. 52, 53, 54, 55, 56, 57, 58, 61, of $1,000 each, all sold to Morrison & Hutchinson; and also one bond sold to them, No. 130, for $500.

Q. You now identify among those exhibits the bonds which you have already mentioned as numbered 62, 63, 64, 65?

A. Yes, sir; those four bonds of $1,000 each, Nos. 109, 110, 111, for $500 each; No. 131, which I sold to Morrison & Hutchinson, is not here.

Q. Is No. 142 there?

A. Yes, sir; Nos. 142, 143, 144, 145, all for $500, I find here.

Q. You further identify among the exhibits bonds which you have sold numbered 160——

A. I do not find among the exhibits bonds 160, 162, 163, 169, 171, of $100 each.

Q. You do find among the exhibits and identify bonds Nos. 210, 214, 215, 216, 217, 222?

A. I do.

Q. No. 233?

A. I do not find; I find Nos. 227, 228, 229, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 281, 282, 283, 286, 287, 337, 338, 339, 340, 341.

Q. Will you look at those bonds to observe that there is no seal annexed to them?

A. I notice it.

Q. When first did you know that these bonds were without seals?

A. The first knowledge I had of it—the first time my attention was called to it—was by a letter from Mr. Hutchinson, I think about a year ago.

Q. Long after the purchase?

A. Yes; six or seven years after the purchase; it was a year or two ago; I am not certain of the date.

103 Q. At the time of your receiving the bonds for sale, or disposing of them, had you any knowledge or did you notice this defect?

A. I did not notice it.

Q. Did Morrison & Hutchinson, or any of the other purchasers of the bonds in this suit have any such knowledge, so far as you know or believe?

A. Not so far as I know.

Q. You received in exchange for these bonds money after the rates you have specified?

A. Yes, sir; principally eighty cents on the dollar, I think they were sold at; my books show that a great many of the sales were made at that price; small amounts we had an advance for.

Cross-examined by Mr. VANATTA:

Q. Where was your place of business in 1869?

A. No. 1 Wall street, New York.

Q. Broker's business?

A. Yes, sir.

Q. Your firm that year consisted of whom?

A. Kellogg & Parker.

Q. When was that firm changed?

A. It was changed the 1st of May, 1870, as I recollect; on the 1st of April, possibly; it was in the spring of 1870.

Q. What was its composition from that time on?

A. It was Parker & Lawrence for one year thereafter; it was earlier in the spring.

Q. What was Mr. Lawrence's Christian name?

A. Samuel.

Q. Were any other persons in any way interested in the firm?

A. No, sir; not at all.

Q. Had your firm in 1869, or your firm in 1870, in either year, any interest with the firm of Morrison, Son & Hutchinson?

A. None whatever.

Q. They were entirely distinct establishments?

A. Entirely so.

104 Q. When first did Mr. Handford bring to your firm any of the bonds of Bernard township to be dealt with?

A. In the spring or early summer of 1870.

Q. Can you give the precise date?

A. No, sir.

Q. Have you anywhere any memorandum or record of when it was, and what, if anything, he left with you on that occasion?

A. I have no memorandum of the date on which he left the bonds; the first memorandum I have would be of the sale of the bonds; it may have been the same day or two weeks afterwards, possibly; I cannot fix the exact date.

Q. Did he make any arrangement with you for the sale of those bonds before he left the bonds in your possession?

A. I am not able to say that he did.

Q. Can you give any idea of the amount that he left with you on the first occasion?

A. No, sir; not with any degree of accuracy.

Q. Make the best approximation you can.

A. I should say that he left quite a large lot of the bonds, may be $20, $30, or $40,000, more or less; this transaction was a great many years ago, and my memory is not clear as to the exact number.

Q. At the time he left with you bonds to be disposed of, did not you make an entry in your books of the bonds that had been left with you, so that your books would show what you received from him, and what you were answerable to him for?

A. Possibly there might be an entry in the books, but they are not available.

Q. What has become of them?

A. They are stored away in New York; I stored them away in New York seven years ago and I have not seen them since, and have had no occasion to refer to them.

Q. On what understanding or arrangement did he leave with you the first batch of bonds?

A. My recollection is that he brought the bonds to us to advance the money on and sell for his account; that was the understanding that we were to make reasonable advances and sell for his account.

105 Q. Did you advance him any money; and, if so, to what extent, and on those bonds?

A. I am not able to say how much we advanced him. We advanced him from time to time——

Q. I am speaking with reference to the first batch.

A. I cannot tell you. I should say, from general impression, that we advanced him approaching the value of the bonds. He was a needy man and a contractor; but that is only a general impression.

Q. Have you any account of the advances you made to him?

A. Undoubtedly it would appear on the books if I could get at them.

Q. Have they been destroyed?

A. Not that I am aware of.

Q. Was it the understanding that you reimbursed your advances with the sales made of the bonds?

A. Yes, sir.

Q. You always allowed yourself some margin above the market value?

A. In the advances? O, yes; we tried to be on the safe side.

Q. Did you make sales of many outside of your establishment on pledges of those bonds for Mr. Handford?

A. No, sir; I have no recollection of any such transaction.

Q. Did you try to do so?

A. I have no recollection of any such transaction. I am very sure I did not.

Q. Is there any way by which you can tell us the numbers of the bonds he left with you on the first occasion?

A. No, sir; I do not think there is.

Q. Is there any way by which you can tell us, with pretty close accuracy, the time when the first installment was left with you; whether it was in April, May, or June, 1870?

A. I could not tell you the month probably. The first sale I have recorded is on the 8th of June, 1870; but that is not the first page of the book, and I think it must have been before that some time. I think it must have been a month or two previous to that.

106 Q. Had you any knowledge of the bonds before Mr. Handford called upon you in relation to them?

A. No, sir; nothing; except, I suppose, I had a general knowledge that the road was to be built, or talked of being built, and that the towns were to issue bonds; but I may not have had that knowledge; I cannot say that I did have.

Q. You cannot say that you did have any particular information of those bonds before Mr. Handford called upon you with them?

A. I cannot say that I had.

Q. Can you tell us what inquiries you made of him in regard to those bonds?

A. I cannot, except in substance.

Q. Did you make any inquiries of him?

A. O, yes; I suppose what I was about to say was drawn out of him by inquiries.

Q. I asked what you said.

A. The conversation was to this effect: I suppose I would naturally ask him about the bonds as a prudent business man would.

Q. I want to know what you recollect about what you actually did; have you any recollection of any specific or particular question?

A. Not in words. I have no doubt at all of the substance of it; it was that I asked him as to the bonds, and he explained to me how they came in his possession and for what purpose.

Q. Did he tell you how they came into his possession?

A. I think he told me they were given as subscriptions to the stock of the road by the townships.

Q. Did he state how he got them?

A. They were paid to him for work done on the road; he was the contractor; he received the bonds in payment for work.

Q. Did he state who he received them from—who paid them to him?

A. I am not able to say. I know he stated to me that he got no bonds or payments unless the chief engineer of the road gave him a certificate that a certain amount of work was done.

107 Q. You understood that he got them from the railroad company?

A. I understood so, certainly; of course.

Q. Did he state to you the chief elements of his contract for building the road?

A. I am not aware that he did.

Q. Did he tell you that he got one hundred per cent. advance on the original price because he took these bonds?

A. Nothing of the kind.

Q. Did you see his contract?

A. No, sir.

Q. Did you ask him to see it?

A. I do not know that I did.

Q. He left some of the bonds with you?

A. Yes, sir.

Q. Did you open them?

A. Yes, sir; and examined them.

Q. Did you read them?

A. I suppose I did—I judge so; I cannot say I opened every bond or every other bond.

Q. Did you look whether they were signed or not?

A. I suppose I did.

Q. Do you say they had any signatures at that time?

A. I think I can.

Q. Have not the signatures been put on since?

A. I judge not.

Q. Why do you think they had signatures at that time?

A. I do not think I would be likely to sell a bond if it had not a signature on.

Q. You dealt in bonds a good while?

A. I had dealt in bonds some.

Q. A large amount?

A. Yes, sir; a considerable amount.

Q Of various corporations?

A. Yes, sir; some three or four.

Q. You had knocked about in the world long enough to know that the very word "bond" imported a sealed instrument?

A. I do not know.

108 Q. What did you understand to be the distinction between a promissory note and a bond?

A. I suppose if my attention had been called to it I would have discovered there was no seal there.

Q. Was any trick resorted to to divert your attention from looking at them?

A. Not that I was aware of.

Q. You could not have looked at the signature without seeing there was no seal there?

A. I suppose not, if my attention had been called to it.

Q. Did you read the bonds through?

A. I presume so.

Q. Did you ask to see the act of legislature that had given power to these people to put the township in debt?

A. I presume I did not.

Q. Did you make any inquiry or examination at the office of the county of Somerset with regard to what proceedings were recorded there touching these bonds?

A. No, sir; I did not.

Q. When did you get the next lot of bonds?

A. I am not able to say; I got them all along during the summer, at different times.

Q. How many different parcels?

A. I cannot say; I might have got half a dozen, and might have got twenty, as we were ready to advance them—the money on them.

Q. Were pretty much all the bonds you got disposed of to Morrison, Son & Hutchinson?

A. No, sir.

Q. Did they take the principal part of what you sold?

A. No, sir.

Q. What proportion of the bonds you disposed of do you take it Morrison, Son & Hutchinson bought?

A. You refer to the township of Bernards only?

Q. Precisely.

A. We sold for three townships.

Q. I have no concern in the others.

A. I suppose it would be a rough guess; we probably might have sold for the Township of Bernards forty, fifty, or sixty thousand dollars' worth of bonds; I think we sold altogether a hundred thousand for all three, but I think we sold more of Bernards than the others, considerably more.

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Q. About how much of Bernards?

A. We may have sold forty or fifty thousand, more or less, I cannot tell.

Q. You mean altogether?

A. Of the Bernards; we might have sold more than that; I think of all the bonds of the several townships we might have sold a hundred thousand.

Q. Did you, as you received them from Mr. Handford, make a memorandum of the bonds you received from him?

A. Probably.

Q. At the time of the receipt?

A. I suppose so, undoubtedly.

Q. And you also kept an account of the bonds you sold?

A. Yes, sir.

Q. Independent of your book you could make very little definite statement as to what you had already sold?

A. I think I could—you mean of the Township of Bernards alone?

Q. I doubt whether you apprehend my question. My question was whether if you had not had recourse to your books at all you could tell us the number of any of those bonds you sold to Morrison & Co.?

A. No, sir; I could not have told you.

Q. Or when you sold them?

A. Not anything better than a year.

Q. Or the price at which you sold them?

A. I think I could the price.

Q. Of the particular bonds?

A. Yes, sir; I think I could.

Q. You did have recourse to your books to refresh your memory for this examination?

A. I did; yes, sir.

Q. And you have not brought your books here?

A. I brought only certain pages, which I supposed was all that would be required; I supposed it was the bonds of Morrison & Hutchinson.

Q. Those pages you cut out of the book?

A. Yes, sir.

110 Q. When?

A. I cut them out day before yesterday and put them in my pocket, in an envelope, so as to be sure not to forget them.

Q. I want to know why you did not bring the book itself without mutilating it?

A. I told Mr. Parker that the book was a large one, and inconvenient to carry; I supposed I cut out everything that would be referred to in this suit; these included the bonds sold to Morrison & Hutchinson.

Q. That book ought to have information that I would like very much to have; I would like very much to know how many bonds and what numbers they were, and I should think you had a very unbusinesslike establishment unless the book would show.

A. The book that was simply kept for an entry of the sales of bonds would not show that.

Q. You became a trustee for the sale of those bonds when he left them there, and I do not presume that you left it entirely to memory?

A. I put them in my strong box in the bank, until I had occasion to use them; I have not the least objection to producing the book; it will show simply the sales of bonds and nothing more.

Q. Did you ever receive a lot of bonds from him for sale that you did not examine?

A. I am not aware that I did; I think I examined everything that I received from him; I think I would be likely to do it?

Q. You speak of having sold some of these bonds to Morrison, Son & Hutchinson; was that sale made by you in person?

A. Yes, sir.

Q. All of them?

A. $10,000 were sold by me, personally.

Q. The others were sold by whom?

A. By myself, my partner, or the clerks; I am unable to say.

Q. Where were the deliveries made of those bonds?

111 A. Made at our office as a general thing; there may have been exceptions.

Q. Was that the usual practice?

A. The usual practice was that parties paid for them when they took them away.

Q. Were you present at any of those deliveries?

A. Yes, sir.

Q. Do you know whom they were delivered to in this case of Morrison & Hutchinson?

A. No, sir; I do not.

Q. To some member of the firm?

A. I think so.

Q. Not to a clerk?

A. I cannot tell you that; they may have sent a clerk.

Q. Do you remember on any occasion of having delivered to any member of the firm in person when the member of the firm received the bonds that you sold to Morrison & Hutchinson?

A. I only sold them on one occasion; I sold this $10,000 of bonds at one time; whether Mr. Hutchinson or Mr. Morrison received them, or sent a clerk to take them up, I cannot say; I only sold to them at one time, the consecutive numbers all at once; that is my recollection of it.

Q. Then some of these you say you disposed of were disposed of to some other purchasers?

A. Some that I have identified?

Q. Yes.

A. Certainly; only $10,000 were sold to Morrison & Hutchinson.

Q. You disposed of more bonds than you appear to have sold directly to them?

A. More of the Bernards township bonds? Certainly.

Q. Can you say who they were sold to?

A. I have identified two to James E. Clark.

Q. You do not know how they came into the hands of Morrison & Co.—these you sold to Mr. Clark?

A. I do not.

Q. After you made this sale to Morrison, Son & Hutchinson, did you get any word from them, either at the time of delivery or afterwards, that the bonds you delivered to them were imperfect bonds—not complete in their execution?

112 A. Not until within a year or two ago.

Q. Never before?

A. Never before.

Q. When you delivered to them was there any artifice resorted to on your part to withhold from them a full examination, or to divert their attention from the thorough inspection of them?

A. No, sir.

Q. Do you know any reason why they did not see everything that was there or was not there?

A. Perhaps for the same reason that I did not; I can give no better answer than that.

Q. At that day anything that was called a bond sold, did it not?

A. No, sir; on the contrary I could not sell anything that was not called very good.

Q. Could not you have sold them just as well if they had not been signed as though they were signed?

A. I do not know whether that is a fair question to ask; I don't know what I could have done; you asked whether I made any inquiries about these bonds before they came into my possession.

Q. I asked whether you had before Mr. Handford came there?

A. That may have been the first information I had of them.

Redirect:

Q. Had you any information as to the character and validity of the bonds except from Mr. Handford, or in any other form than oral?

A. Yes, sir; I had.

Q. What was that?

A. There was an opinion by you that those bonds were good.

Q. That the bonds of that company were good?

113 A. The bonds of that company were good; and further than that, I made inquiries of Governor Randolph in relation to these town bonds, and he spoke favorably of them, and said the bonds were good; and said, "I am opposed to the issuing of town bonds in this State for the purpose of helping railroads; but," he said, "these bonds are good." I think he spoke as plainly and emphatically as that on that subject; he was at that time governor of the State.

Q. Was this opinion given to those who wished to purchase the bonds?

A. Yes, sir.

Q. And among others to Morrison & Hutchinson?

A. Yes, sir.

Q. What was the manner in which these bonds were paid for—the method in which the negotiation was perfected between you and those to whom you sold?

A. Parties came in to see us that had seen our advertisements or knew we had bonds for sale, and asked to see what we had; we would show them and they would examine them, I suppose, and make up their minds; sometimes parties would come many times before deciding to buy, and then afterwards come back and buy; some parties from out of town would order them to be sent to them.

Q. Which was first, the payment or the delivery?

A. Sometimes they were sent C. O. D.; I cannot say that that was the case with these bonds, but I suppose it was; they generally paid for them over the counter and then took the bonds with them.

Q. When you say they examined them, do you speak from recollection of any individual you can designate who examined these bonds?

A. I cannot say that; I can only say from the general way of doing business that a man would probably look at the bonds.

Q. I understand these very bonds you sold had been the subjects of advances which you had made upon them?

A. Yes, sir.

Q. And advances nearly up to their value?

A. Very nearly, perhaps two-thirds or three-fourths, but pretty full advances.

Q. But whatever your advances these were made without any suspicion of any defect?

A. Without the slightest suspicion.

114 Recross examination:

Q. If you can give me an instance of any banker or broker in New York that ever advanced over thirty-five per cent. on these bonds as collateral, please do it.

A. I may have been the only person that did advance on them; I do not know; I would not be likely to know what the others did; there might have been a hundred brokers who advanced on them, but I would not know anything about it.

Q. I speak of a case where they were pledged as collateral; did you ever know of a case of over thirty-five or more generally thirty per cent. being advanced as collateral?

A. Do you mean on these particular bonds?

Q. Any bonds of that township.

A. I do not know as any advances were made except what we made; I am unable to say.

Q. You said you had a conversation with Governor Randolph; tell me the time as nearly as it occurred.

A. It was about the time I took the bonds in the spring; I am unable to give the date.

Q. Did the governor tell you that he, as one of two trustees, held a mortgage on that road for $3,000,000?

A. I knew he was a trustee of the road.

Q. Which rendered the stock utterly and totally worthless, and not worth the paper it was written on?

A. He did not tell me that, I guess.

Q. He told you at the time he was the trustee named in the mortgage?

A. I knew he was—I had seen the bond.

Q. About the time of this conversation?

A. I cannot tell whether it was before or after.

Q. You did know, at that time, that the consideration the town had given for these bonds was the stock of that railroad company?

A. I presume I was told so; I presume that was the explanation of the bonds being paid out to the contractor.

Q. Did you also know that at that time the tax-payers of that township gave their consent, so far as they did give their consent to the
115 issuing of these bonds, that the railroad company had no power at all to make any mortgage, could not mortgage their road?

A. I did not know it.

Q. Did you know that the consent of the tax-payers had been got by assurances from the agents of the railroad company that there was no mortgage, and no power to make one, and that there never should be one, and that their stock should be the only lien on the road?

A. I did not know any of these things.

Q. Did you examine the charter of the company?

A. I do not think I ever saw it.

Q. Did you examine the act that authorized the bonding of the township?

A. I am unable to say.

Q. Did you ever look at the act to see whether the township had any authority to trade its bonds for stock in a railroad company where there had never been a cent paid for it or anything done?

A. I do not know anything about it.

Q. If you had known the fact that that stock subscription had been got upon a pledge that there was to be no mortgage, and that as soon as they got their consent they mortgaged the road for three times its value and made the bonds worthless, would you have bought them then?

A. If I had not supposed the bonds were good I would not have anything to do with them.

Q. If you had known that fact would you have supposed the bonds were good?

A. I would have taken legal advice.

Q. But if you had supposed that the bonds were got by a fraud of that sort you would not have delivered the bonds at all?

A. If I had understood they were fraudulent I would not have had anything to do with them.

Q. Did you ask the governor about that mortgage that he was one of the trustees in?

A. Yes, sir; I did.

Q. Did you ask him how it would affect the town bonds?

A. I did not ask him anything about it.

116 Q. Did you ask him whether it would help the town bonds?

A. The township expected to be helped by its being brought nearer to New York; and if they lost their stock their argument was that it was worth what it cost to them.

Q. You recollect that the township did not travel on the railroad?

A. No, but the people did.

Re-redirect:

Q. Did you learn that in consideration of the stock possessed by them the Township of Bernards nominated a director of this company?

A. I did; I understood that; I was told that; I do not know it any further than by information and belief.

By agreement of counsel, the signature of the witness to the above deposition was waived.

GARDNER S. HUTCHINSON, a witness called on behalf of complainants, being duly sworn, deposes and says:

By Mr. PARKER:

Q. You are a merchant in New York?

A. Yes, sir.

Q. One of the firm of Morrison & Hutchinson?

A. Yes, sir; successors of Morrison, Son & Hutchinson.

Q. One of the plaintiffs in this suit?

A. One of the plaintiffs in this suit.

Q. You are in business in New York, and the business is what?

A. The manufacture of shirts for sale, at wholesale, No. 593 Broadway now.

Q. You have brought suit for the enforcement of the payment of the interest due on a number of bonds mentioned in the pleadings?

A. Yes, sir.

Q. State the circumstances under which you became possessors of those bonds.

A. The first bonds that came into our possession were purchased

117 by us either on the 26th or 27th of July, 1870; we received a circular from Mr. Parker, with whom we have dealt for a number of years, notifying us that he had these bonds, and as we were buying bonds in the market I went to see him about them and find what bonds they were. They informed me of the township that they were, and he informed me, also, that he had an opinion from Parker & Keasbey; also, that he had conversed with Governor Randolph in regard to the matter, and that the bonds, he thought, were undoubtedly good. I think he stated he was selling at about 81. I bought $10,000 worth of the bonds at 80, paying him on the 27th of July by a check of our firm for $8,000, and took the bonds in person from Mr. Parker over the counter.

Q. What did you see of the bonds at that time?

A. I did not examine the bonds at all. I never opened one of the bonds until some time after the purchase.

Q. When did you first become aware that the bonds were without any seal?

A. After I had placed them in your hands for suit, I was notified by you that the bonds had no seal. That was the first intimation I had that there was anything about the bonds at all wrong.

Q. How long was it after you become possessor?

A. It must have been three or four years. I cannot state precisely. The first coupon was paid after we received the bonds and none afterwards.

Q. As to the other bonds that you have in your possession, state how they came there.

A. Having determined to commence suit, I obtained from Mr. Parker and from Parker & Lawrence, and from other parties, the names of all the parties I could who were holders of the bonds. I corresponded with them and persuaded them to transfer to me the bonds they held for the purpose of commencing suit, so as to unite as large an amount as possible. They transferred the bonds or coupons to me, and directly the suit was commenced upon them.

Q. Which of the bonds exhibited did you pay for as you have said?

A. I paid for bonds from No. 51 to 61, for nine bonds of
118 $1,000 each, and two bonds of $500 each, Nos. 130 and 131; that makes the $10,000 that Mr. Parker speaks of.

Q. Did you prepare this list?

(Showing witness Exhibit No. 70.)

A I prepared that.

Q. Can you state by whom the others were placed in your possession?

A. Not from this list; but I can from another list I prepared at the same time from the bonds themselves.

Q. Do so.

A. Numbers 41 and 42 were placed in my possession by James E. Clark, of Philadelphia, each for $1,000; number 48, for $1,000, and number 113, for $500, by Mr. S. S. Van Saum, of Orange County, State of New York; numbers 49 and 50, for $1,000 each, by M. E. Halsey, Essex County, New Jersey; and numbers 210, 214, 215, 216, 217, 222, 223, 227, 228, 229, 265 up to 279 inclusive, 281, 282, 283, 286, and 287, for $100 each, I received from Mr. Halsey; number 183, for $100, was received from a man named Israel Ward, of Union, Essex County, New Jersey;

he is now deceased. Also, five bonds, numbers 337 to 341 inclusive, for $100 each, from Mr. Samuel P. Bell, of the city of New York; also, numbers 62, 63, 64, and 65, for $1,000 each, from T. M. Delany, of Philadelphia; also, numbers 142, 143, 144, and 145, for $500 each, from Mr. T. M. Delany; also, numbers 109, 110, and 111, for $500 each, from Mr. L. Fullager, of Buffalo, New York; also, numbers 160, 162, 163, 169, 171, five bonds, of $100 each, belonging to H. G. Manahan, then residing in Port Chester, New York, and now residing in West Virginia.

Q. Such of the bonds as you did not yourself pay for are transferred to you in order to the prosecution of this suit?

A. Yes, sir.

Cross-examined:

Q. Bonds of the face value of $10,000 are all you have invested any money in?

A. Yes, sir; that is all.

Q. And from the others, if collected, you will receive no part of the money collected?

119 A. I shall probably receive all the money collected directly in the first instance.

Q. I mean you will not receive it as your own property?

A. No, sir; I expect not.

Q. Is your agreement with these gentlemen in writing, who sent you these bonds?

A. No, sir; it was sent as a request on my part that they should place their bonds in my hands for the purpose of uniting with myself to sue them.

Q. What was your object in making that combination?

A. To have as many of the bonds of the township represented as possible, and for the purpose of avoiding expense to myself, and also that those other gentlemen might on their own part be saved the expense of separate suits.

Q. What was your agreement with them touching the expenses?

A. That they should bear their pro rata proportion of the expense of such suit.

Q. This arrangement was made in every instance at your request?

A. Upon my request; I say in every instance, perhaps not; I think one or two of the parties called on me with the request.

Q. After you called their attention to it?

A. No, sir; parties not connected with the suit; I believe Mr. Van Saum called on me for that purpose, whom I never had met and never heard of as a holder of the bonds at all.

Q. What is Mr. Van Saum's business?

A. I do not know—I think he is a druggist.

Q. What was his post-office address on the commencement of this suit?

A. I cannot remember it at this moment; if you can give me the names of the towns on the Erie road, I can recollect it—it is near Goshen.

Q. West of Goshen, or east?

A. East of Goshen.

Q. About how far away?

120 A. A short drive—five or six miles from Goshen; I will probably think of the name before the examination is concluded.

Q. Mr. M. E. Halsey lives at Elizabeth, you say?

A. No, sir; I think his residence is at Union, Essex County—very near New York.

Q. He lived there at the time?

A. He lived there at the time; he lives at the same place he lived at that time.

Q. Israel Ward lived at that time in New Jersey?

A. Yes, sir; I never corresponded with him until his bond came to me through Mr. Halsey.

Q. Where did Samuel P. Bell live at that time?

A. He lived in New York City.

Q. At that time?

A. At that time.

Q. Has he lived in New Jersey at any time within eight years?

A. Never at all, I think.

Q. This gentleman from Buffalo (Mr. Fullager), has he lived in New Jersey within eight years?

A. Never, sir; he is president of the Lake Shore Banking Company, Buffalo.

Q. Mr. Manahan resided where?

A. He resided at Port Chester at that time, and now in West Virginia.

Q. How long did he live in Port Chester?

A. I do not know; I did not know him prior to the commencement of the suit.

Q. Your attention to these bonds was called by Mr. Parker's advertisement, I understand you?

A. Yes, sir.

Q. Had you no previous information respecting them?

A. None at all.

Q. Did you get any additional information before you went and bought of him?

A. Not at all; I was transacting considerable business with Mr. Parker.

Q. Did you make the purchase at your first call on him relative to that subject?

121 A. No, sir; the second time; I took the check to him the next day.

Q. Did you take the check the first day?

A. No, sir; the second day.

Q. You made the bargain the first day?

A. I talked the matter over, and had some money to invest, and went the next day and invested it.

Q. On the first day did you see the bonds, or any specimen of them?

A. I did not; I did not ask to look at them.

Q. You did not look at them on either day?

A. I do not think I ever examined a bond that I bought in the street, and I have bought a great many; I do not think it is the custom to examine bonds, careless as it may be.

Q. When you paid your check and got the bonds you had never looked inside and read the face of any of them?

A. I never did.

Q. What I want to get at is, how it is, and why it is that you paid out $8,000 in money and did not even read or look at the face of the obligation you took in consideration for your money?

A. For the reason, as I said, that I do not believe one in ten who buy bonds in the city of New York ever read their bonds; I think it is hardly ever done, and I think you will find it is the experience of every banker selling bonds; they simply count all the bonds to see that they have the requisite amount, and pay for them and take them; I hold bonds now that I have never read.

Q. Your reason is that it is not the fashion in New York to read them?

A. Not at all; it is simply because I am careless, probably; that will answer the question as well as anything.

Q. When did you first open them and read the contents of any of them?

A. I have never read the contents yet; after the failure to collect the coupons I ceased to feel very much interest in reading the bonds, and placed them in Mr. Parker's hands.

Q. You bought these, you say, on a certain day in July?

122 A. On the 27th day of July, 1870.

Q. Was the overdue coupon for July then cut off, or was it on?

A. The overdue coupon, I think, was then off in July.

Q. Are you clear on that point?

A. I am not clear, but I think it was.

Q. Who cut off the coupon for January, 1871?

A. I cut it off.

Q. You did have to unfold the bond to some extent for that?

A. I did, of course; I could not without unfolding it.

Q. Did you read them then?

A. I did not; and after the coupon is paid there is less necessity for reading it.

Q. Where did you get the pay for that coupon?

A. At the American Exchange Bank.

Q. Did you deliver it in person or send it through the bank?

A. In person, at the American Exchange Bank.

Q. How many coupons after that were paid?

A. None that I have ever heard of.

Q. Did you make any inquiry at the bank as to who had furnished the money to pay?

A. I did not; probably they would have declined any such information as that.

Q. You did not try to get it?

A. I did not; it was sufficient to me that the coupon was paid; on presenting the next coupon they simply made the announcement that they had no funds; that is all the information a bank generally gives on such points.

By agreement of counsel, the signature of the witness to the above deposition was waived.

JAMES E. CLARK, a witness called on behalf of complainants, being duly sworn, deposes and says:

By Mr. PARKER:

Q. State your residence and occupation.

A. I reside in Philadelphia, and am a notary public and editor of a newspaper.

123 Q. Have you been always a resident of Philadelphia?

A. I have not; I have been for the last thirteen years.

Q. Did you purchase either of the bonds which are mentioned in this suit?

A. I did; Nos. 41 and 42, for $1,000 each.

Q. They are here among the exhibits?

A. They are here, and I have seen them.

Q. Will you state the circumstances of such purchase?

A. I saw an advertisement of securities for sale, I think, in the Independent, in 1870, of Parker & Lawrence; I wrote them asking for information, being at the same time purchasing bonds from other parties in this city; I received a circular giving some information in regard to them, was suited with it, and made the purchase by mail; the bonds were sent to me by express.

Q. How did you pay for them?

A. It was by draft on New York.

Q. Which you mailed in advance of receiving the bonds?

A. According to the best of my recollection I mailed it in advance of receiving them.

Q. What did you give?

A. Eighty-three and three-quarters, if I remember rightly; I think Mr. Parker's slip will show that that is the amount.

Q. Did you collect any coupons?

A. I did; I received payment for the first coupons due.

Q. How did you get them?

A. It was sent for collection through the bank.

Q. When did you first know of any defect in these papers through the absence of the seal and the names of the commissioners?

A. Through a letter written me by Mr. Hutchinson.

Q. When was that?

A. I do not remember the date; it was immediately after his ascertaining the fact, or soon after.

Q. Was it after the commencement of this suit, do you know?

A. According to the best of my recollection, it was quite a length of time.

124 Q. Do you remember making any examination of the bonds at the time you received them?

A. I remember looking them over, but did not observe any absence of the seal.

Q. How came your bonds to be among those which are the subject of this suit?

A. I received a letter from the firm of Morrison, Son & Hutchinson, stating that a suit was to be brought, and asking if I would join with them in suit; I wrote to New York asking information in regard to them in order to know whether I was dealing with a worthy party; after that I said I would do so and sent the bonds to them.

Q. It was after that that you received the information of the absence of this seal?

A. It was after that; I could not state the exact time, but it must have been in the neighborhood of a year or more.

Cross-examined by Mr. VANATTA:

Q. Have you the circular you received from Parker & Lawrence?

A. I have.

Q. Will you allow me to see it?

(Witness produced a printed pamphlet.)

Q. Is this all you received in answer to your letter from Parker & Lawrence?

A. I do not remember whether I received an additional letter or not.

Q. Have you any recollection of anything else except this pamphlet?

A. I have not, not at that immediate time; I afterwards received a letter about the price at which he would sell them.

Q. Have you that letter?

A. I have not.

Q. What has become of that?

A. I presume it is destroyed.

Q. Have you looked for it?

A. I did look to see if I had it.

125 Q. You read this statement which precedes the act of the legislature here in the pamphlet, did you not?

A. Yes, sir.

Q. You also read the act of the legislature before you gave the order, did you not?

A. I did.

Q. You read the act through, did you?

A. Yes, sir.

Q. Did you find in the act any authority giving permission to the township to change the bonds of the township to the stock of the railroad company at par?

A. I could not remember that without rereading it.

Q. Find it there, if you please?

(Objected to by counsel for the plaintiff.)

A. Do you refer to this, at the top of page seven, "but not for less than par?"

Q. I asked whether you found any authority given by the township commissioners to change for the stock of the railroad company at par.

A. I find this: "Money to be raised shall be invested in the stock of said railroad company."

Q. You see what the preface says, that the bonds had been got by giving railroad stock for them at par?

A. I will have to look at that again; I saw what was in it then; I have not read it for a long time; I saw that at the time most certainly, for I see it now.

Q. You did not come face to face with Mr. Parker or Mr. Lawrence at all, did you?

A. No, sir; I never met Mr. Lawrence.

Q. I mean before you bought the bonds?

A. I never met him, and do not think I ever saw Mr. Parker until this morning.

Q. Are you clear in your recollection that you remitted the pay for these bonds before the bonds were sent to you?

A. I could not swear positively to that, whether it was sent before, or whether they were sent C. O. D.

Q. What is your best recollection?

A. My impression was that I forwarded the draft first.

Q. You bought, then, without ever seeing them?

A. Yes.

126 Q. As soon as you received them you read them, did you?

A. I believe I read them.

Q. You looked to see whether there were any signatures to them?

A. I do not recollect of looking particularly at that; I think I would have seen if they were not there.

Q. You read it clear through?

A. I think I did.

Q. Did you give any notice to Parker and Lawrence that they had sent you bonds imperfectly executed?

A. I did not; I did not notice that the seal was not there.

Q. You knew that the very term "bond" implied a sealed instrument, didn't you?

A. I knew that; yes, sir.

Q. On what terms did you put your bonds into this suit; what is the bargain?

A. At the request of the firm.

Q. On what terms as to expense?

A. We were supposed to share pro rata; there was no written agreement, but merely a statement that we would do so.

Q. You would pay that portion of the expense appropriated to your share of the bill?

A. My share of the bonds.

Q. Have you paid anything?

A. Yes, sir; one payment—a retaining fee.

Q. The bonds are still your property?

A. They are my father's property now. When purchased one of them was mine and the other was his, and the other was transferred to him.

Q. The ownership is the same as before the suit was commenced?

A. Yes, sir; the ownership is the same as to them.

Redirect:

Q. The equitable ownership, you mean, is the same?

A. The equitable ownership.

127 Q. You do not mean that you can withdraw the bonds from Mr. Hutchinson's possession?

A. No, sir; not since the suit has commenced.

Q. You have said that you supposed you examined these bonds; have you any recollection of the fact?

A. I recollect looking at them; but not that I looked at them, scrutinizing them for the purpose of detecting any errors; I took them supposing they were correct, as Mr. Hutchinson said in his examination; I was in the habit of purchasing them without rigid examination; I have purchased many, and taken them folded up, without looking them over.

(The circular produced by the witness is offered as an exhibit on the part of the defendants, and marked "Exhibit No. 1 for the defendant.")

Recross-examination:

Q. Have you made any agreement relative to this suit which puts it out of your power to withdraw these bonds of yours any time you see fit—to-day, or to-morrow, or any time hereafter—provided you pay for your proportion of the expenses incurred up to the time of your withdrawal?

A. I have no written agreement.

Q. That is not what I asked you.

A. No; I did not bind myself.

Q. Have you any doubt about your right to do so, if you chose to do so?

A. As to that, I would take legal advice before doing it.

Q. I asked your present impression.

A. I have no doubt of my right to do it if I chose, except as to a point——

Q. Of morals and honest dealing?

A. Yes, sir; for I wish to deal squarely.

Q. Can you see any reason why you would not be dealing squarely, if you withdrew them and paid your proportion of the expense?

A. If I did all that, I don't see but I would be perfectly at liberty to do anything of that kind.

By agreement of counsel the signature of the witness to the above deposition was waived.

128 THEODORE M. DELANY, a witness called on behalf of the complainant, being duly sworn, is examined and says:

By Mr. PARKER:

Q. State your residence and occupation.

A. My occupation is manufacturer of glue and curled hair; I am at present residing at No. 929 Franklin street, Philadelphia.

Q. Did you purchase any of the bonds, a list of which has been shown in your presence, and which are included in the pleadings in this suit?

A. Yes, sir; I did.

Q. State which of the bonds you so bought and when.

A. I bought bonds Nos. 62, 63, 64, 65, for $1,000 each; and Nos. 142, 143, 144, 145, for $500 each, on the 23d day of June, 1870.

Q. State the circumstances under which you made the purchase?

A. At that time I was doing business in New York, and passing along Wall street, I saw a placard in a window of Parker & Lawrence offering these bonds at eighty-five per cent., if my memory serves me right; I went in and had some conversation with Mr. Parker about them, and afterwards on some subsequent day, called in on their next-door neighbors, C , Hamilton & Co., of whom I bought my gold, and asked if Mr. Parker was a thoroughly reliable man—if his word could be taken for any statement that he might make; they replied that his word was good, and it was a thoroughly reliable house; and they being intimate friends of mine I considered myself safe; Mr. Parker offered the bond at what I considered a tempting price, and showed me an opinion of Cortlandt Parker that they were a legal and valid security—I think those were the words—and on the strength of these two assurances I bought the bonds, making them an offer of eighty, I think, on the 23d day of June, with the July coupon off, which offer they accepted, after sending out to some party to know if the

price was acceptable; I think Mr. Parker sent some person out; they were gone a few minutes; I had a draft of the Kensington National Bank, I think, on the Central National Bank, New York, for $5,000;
129 Mr. Parker said, "You are a stranger to me, and I will have to step to the bank and see about this;" I said, "You can step to the next door to & Hamilton, and they will tell you whether my endorsement is good on this draft;" he went in there and came back in a few moments and handed me a check for $200; it may have been currency; I took the bonds home and examined them and put them away; in looking at them I never noticed that the bonds were not sealed; I looked at the signatures to know whether all the signatures were on each bond; there were three commissioners, I think—that is my impression.

Q. When did you first become acquainted with the fact, or realize the fact, that these bonds were without seals?

A. It was some time after they were in suit; I cannot locate the time whether before I moved to Philadelphia, which is four years ago next month, or whether it was after I came to Philadelphia; Mr. Hutchinson met me in a car one day and told me of the fact; or whether he wrote to me from New York City I cannot remember, but my impression is it was before I left New York—I would not swear positively on that point; he told me that the bonds were informal; my impression is that I went over at once to the Long Island Safe Deposit Company and took out my bonds to satisfy myself that they were not sealed; it may be that I went to the Safe Deposit Company here and got them, but I went to them to see that Mr. Hutchinson was correct in his statement.

Cross-examined by Mr. VANATTA:

Q. You lived in Brooklyn in 1870?

A. I lived in Brooklyn at that time, and did business in New York City.

Q. Did you continue to reside there until you came to Philadelphia?

A. Yes, sir, until 1875.

Q. Since that you have resided in Pennsylvania?

A. Yes, sir; altogether.

Q. You bought those bonds at your first interview with Mr. Parker about them?

130 A. No, sir; after I went to Mr. Parker's office he showed me a printed copy of the legal opinion as to the bonds being a valid security; I then went into the next door to the office of a bullion-dealing firm, where Daniel Cohen was a partner, and asked them about the standing of Mr. Parker, as he was a perfect stranger to me.

Q. You did not make the purchase on the first day you called?

A. No, sir; I wanted to be better informed.

Q. When did you make it?

A. It was but a few days afterwards; I think it was on the second interview I had with Mr. Parker.

Q. Which was a few days afterwards?

A. Yes, sir; a few days afterwards.

Q. It was on the first call they showed you the opinion of Cortlandt Parker?

A. Yes, sir.

Q. Have you got that?

A. I think I gave it to Mr. Hutchinson; I showed it to him this morning; he had quite a pile of them in his office and I thought I would take one. (Mr. Hutchinson produces the opinion.)

Q. When you made the purchase did you look into the bonds then?

A. At the very moment of making the purchase?

Q. While you were there at the office, in the course of the transaction?

A. It is my impression that Mr. Parker opened the bonds and showed me one, but I do not think I read it over.

Q. But you did read them when you got them home the same day?

A. Yes, sir; I read them when I got them home, and looked to see if the signatures of the commissioners were all on.

Q. You did not notice that the seals were not on?

A. No, sir.

Q. You did not until years afterwards?

A. Not until Mr. Hutchinson told me that Mr. Parker had advised him that the bonds were informal.

Q. What arrangement did you make with Mr. Hutchinson about the prosecution of this suit?

131 A. Mr. Hutchinson and I used to meet, when on my way from New York to Brooklyn, and we talked over this matter as we were both interested in these bonds.

Q. What part of the expenses were you to pay?

A. Pro rata; the idea was to get as large an amount of the bonds together as possible, and pro rata the expenses.

Q. In your communication with Mr. Parker about the purchase of those bonds did you receive a pamphlet like this? (Showing witness defendants' Exhibit No. 1.)

A. No, sir; I do not recollect of seeing a pamphlet of that character, only the printed circular that lay on his table in the back part of his office; there were two or three hundred of them lying there.

Q. Did you learn from Mr. Parker how the railroad company had got possession of these town bonds—what they had given for them?

A. No, sir.

Q. You did not ask him?

A. No, sir; I always supposed that he was selling either for the contractor, or the company, by the reason of his sending the young man out to know whether he could take a less price than his asking price.

Q. Did not you think it a little queer that a township could afford to borrow money at eighty-five per cent. and invest it in a railroad?

A. I did not propose to consider the question at all as to what the township would do; if the bond was good, I bought it; I did my part of the business and they did theirs.

Q. You did not suppose that the validity of the obligation was any element of the value of the property, I suppose?

A. I looked at it in this way: that the opinion of a man like Cortlandt Parker was satisfactory to me as to the validity of the bond; if I could not rely upon his opinion, I did not know where I should go; I knew him by reputation.

By agreement of counsel, the signature of the witness to the above deposition was waived.

132 WILLIAM PARKER, already sworn in this cause, and examined before Samuel Bell, commissioner, being again sworn, saith:

I have the book of which I spoke in my former testimony, and from which I cut out pages which I then used before me, and refreshing my memory by its contents, I further say that I sold bonds Nos. 49 and 50 to Ingersoll, Watson & Co. at eighty-one per cent; they were a firm doing business, I think, in New York City; these bonds were for $1,000 each; I sold them myself to one of the firm, and delivered them, I think, over the counter; I have no knowledge that the absence of seals was noticed by this purchaser; I feel sure that it was not, because I never noticed it, and if noticed, I think, it would have been mentioned to me.

Bonds Nos. 62 to 65, inclusive, four of them, each for $1,000, and Nos. 142, 143, 144, 145, each for $500, I find by my book I sold to J. M. Delany, of New York City then, now of Philadelphia—the same gentleman who was sworn there before Mr. Bell, as a witness in this cause.

I sold Nos. 109, 110, and 111, bonds for $500 each, to L. Fullager, of New York State; he resided at Dunkirk, New York; these bonds were purchased by letter from him; I never saw him; I received his check for the price, eighty-three and three-quarters and interest, and sent them to him by mail or express; whether I first received his check or sent them C. O. D., I cannot tell.

I sold bonds Nos. 160, 162, 163, of $100 each, to H. G. Manahan; the entry is made by my partner; the price was eighty-five; I cannot say how they were sold or delivered; after this, on the 25th of July, the same person bought Nos. 169 and 171, of $100 each; I sold these over the counter, as I believe; the price, as before, was eighty-five.

The bonds mentioned in my examination as sold by me and numbered 210, 214, 215, 216, 217, 222, 223, 227, 228, 229, 265, 266 to 276, inclusive, 277, 278, 279, 281, 282, 283, 286, 287, each for $100, I sold to Ingersoll, Watson & Co. for eighty-one; these were in the same lot with bonds 49 and 50, already mentioned; I have already stated what my recollection is respecting the purchase.

133 Bonds Nos. 337, 338, 339, 340, 341, each for $100, I sold on the first day of October, 1870, to Samuel P. Bell, of Harlem; the entry is by my partner; the price was eighty-five and interest.

Bond No. 48, for $1,000, I sold to a Mr. Dewel—Newton Dewel—a broker in Pine street, New York; the entry is by my partner.

I find that the firm of Parker & Lawrence advanced E. Handford & Co., the contractors for the West Line road, largely on the deposit of these bonds $87,500, or thereabouts; we sold bonds, township bonds, for them to the amount of $112,600, par value; our advances were at the rate of about fifty cents to the dollar; I think the rate was higher.

I was a broker in New York City fifteen years, and sold large numbers of bonds; speaking as an expert I state as a fact in my personal experience that purchasers of coupon bonds, such as railroad bonds, township bonds, and the like, seldom make critical examination of the securities they buy; if they open the bonds it is only to glance at them; I couldn't state as a fact within my recollection that any coupon bond I ever bought or sold had a seal; I have no doubt they had, but cannot swear to it.

WILLIAM PARKER.

Sworn and subscribed this 24th day of March, 1879, before me.

B. WILLIAMSON, *M. C.*

Agreed that the above may be taken as an addition to the testimony of the witness William Parker.

JACOB VANATTA,
Attorney of Defendant.

MARCH 25TH, 1879.

134 *Notice.*

Notice is hereby given that the depositions of William Parker and George S. Hutchinson will be taken in this cause on the part of complainants before Samuel Bell, esq., one of the commissioners of the United States circuit court for the eastern district of Pennsylvania and clerk thereof, on Friday, the seventh day of March next, at twelve o'clock, noon, at his office as such clerk in the city of Philadelphia, at which time and place you may, if you choose, attend and cross-examine said witness.

Dated February 24th, 1879.

Yours truly,

CORTLANDT & R. WAYNE PARKER,
Solicitors of Complainants.

Due and legal service of a notice, of which the within is a true copy, is hereby acknowledged this twenty-fourth day of February, A. D. eighteen hundred and seventy-nine.

McCARTER & KEEN,
Per W.
JACOB VANATTA,
Sol. of the Inhabitants, &c., of Bernards.

135 *Complainants' Exhibit No.* 70.

BERNARDS BONDS IN SUIT.

No.	41	Amount,	$1,000	No.	214	Amount,	$100
"	42	"	1,000	"	215	"	100
"	48	"	1,000	"	216	"	100
"	49	"	1,000	"	217	"	100
"	50	"	1,000	"	222	"	100
"	51	"	1,000	"	223	"	100
"	52	"	1,000	"	227	"	100
"	53	"	1,000	"	228	"	100
"	54	"	1,000	"	229	"	100
"	55	"	1,000	"	265	"	100
"	56	"	1,000	"	266	"	100
"	57	"	1,000	"	267	"	100
"	58	"	1,000	"	268	"	100
"	61	"	1,000	"	269	"	100
"	62	"	1,000	"	270	"	100
"	63	"	1,000	"	271	"	100
"	64	"	1,000	"	272	"	100

"	65	"	1,000	"	273	"	100
"	109	"	500	"	274	"	100
"	110	"	500	"	275	"	100
"	111	"	500	"	276	"	100
"	113	"	500	"	277	"	100
"	130	"	500	"	278	"	100
"	131	"	500	"	279	"	100
"	142	"	500	"	281	"	100
"	143	"	500	"	282	"	100
"	144	"	500	"	283	"	100
"	145	"	500	"	286	"	100
"	160	"	100	"	287	"	100
"	162	"	100	"	337	"	100
"	163	"	100	"	338	"	100
"	169	"	100	"	339	"	100
"	171	"	100	"	340	"	100
"	183	"	100	"	341	"	100
"	210	"	100				

136 EXHIBIT 41.

No. 41.] UNITED STATES OF AMERICA. [$1,000.

TOWNSHIP OF BERNARD, SOMERSET COUNTY, NEW JERSEY.

The Inhabitants of the Township of Bernard, in the county of Somerset, acknowledge themselves to owe to bearer one thousand dollars, which sum they promise to pay the holder hereof, at the American Exchange National Bank, in the city of New York, eighteen years after the date hereof, and the interest thereon at the rate of seven per cent. per annum, payable semi-annually, on the first days of July and January of each year, until the said principal sum be paid, on the presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars issued on the faith and credit of said township in pursuance of an act entitled " An act to authorize certain towns in the county of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868.

In testimony whereof the undersigned commissioners of the said township of Bernard, in the county of Somerset, to carry into effect the
137 purposes and provisions of the said act duly appointed, commissioned, and sworn, have hereunto set their hands and seals the first day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

Registered in the county clerk's office.

WILLIAM ROSS, JR.,
County Clerk.

One thousand dollars.

One of coupons annexed.

$35.00.

The Inhabitants of the Township of Bernard, in the county of Somerset, will pay the bearer, at the American Exchange National Bank, in the city of New York, thirty-five dollars on the first day of January, 1875, for six months' interest on bond No. 41.

JOHN R. ANDERSON,
OLIVER R. STELLE,
JOHN GUERIN,
Commissioners.

(Marked:) Thomas H. Morrison, survivors, &c., vs. The Inhabitants of the Township of Bernard, in the county of Somerset, & al. U. S. C. Ct., dist. of N. Jersey. In equity. Complainants' Exhibit No. 1. Samuel Bell, U. S. commissioner.

138 United States circuit court, district of New Jersey.

THOMAS H. MORRISON ET AL.
vs.
THE INHABITANTS OF THE TOWNSHIP OF Bernards et al. } On bill, &c.

By NIXON, *District Judge:*

The bill was filed in this case by plaintiff in a suit pending in the law side of the court, to correct an alleged mistake or to enjoin the defendants in that action against setting up an inequitable defence.

It appears that the corporation defendant in attempting to issue & put upon the market certain township bonds neglected to have seals affixed to the names of the three commissioners designated by the law to act for the corporation, altho' the act of the legislature of the State, authorizing and prescribing the conditions & methods of their issue required that they should be signed and sealed by the commissioners. It is not denied
139 that the omission of the seal was simply an oversight or mistake to the declaration filed in the cause; the defendants have pleaded inter alia that the several bonds in which the action was brought were not sealed by the commissioners & were not the deed of the township.

Such a plea is a good defence at law, & unless a court of equity has power either to correct the mistake *is* restrain the defence, the holders of the bonds have no remedy for their collection.

It is clear from the evidence that the complainants are bona fide holders, without notice of any of the other alleged defects which might be a defence to a holder with notice.

At the time the bonds were issued all parties interested in their issue intended that they should be sealed with the seals of the commissioners acting for & in behalf of the township. Why should not such an omission be supplied? No equity on the part of the defendants is perceived which should restrain the court from correcting the mistake or from enjoining the defendants from setting up the lack of seals as a defence to the action at law.

140 The questions involved in the hearing in this case were practically settled by the court when the demur'er to the bill of complaint was argued, & reference is made to the opinion of the court in overruling the demur'er for the grounds in which a decree in favor of the complainant is now ordered.

As the whole object of filing the bill was to prevent the defendant corporation from setting up, under the plea of non est factum, that the bonds are not sealed, the result may be attained either by directing the surviving commissioners to affix the seals thereto or by enjoining the said defendant from making the specific defence of want of seals; the latter course gives effecient relief, & let a decree be entered declaring that the said several bonds shall at all times, & in all places, & for all purposes be held & taken to be valid & effectual in law to the same extent as if the same had been in fact sealed by the said commissioners before issuing the same; & that the defendant corporation may be enjoined from pleading & alledging as a defence in the suit of law pending in this court or in any other suit that the bonds were not actually sealed by the commissioners before being
141 *being* issued by them, in that the said bonds are not the deed of the township of Bernards, because no seals have been affixed to the names of the commissioners.

Filed Sept. 23, '79.

142 Circuit court of the United States, district of New Jersey. In equity.

BETWEEN THOMAS H. MORRISON AND GARDNER S. Hutchinson, survivors of Thomas A. Morrison, citizens of New York, complainants,
and
THE INHABITANT' OF THE TOWNSHIP OF BERNARDS, in the county of Somerset, Oliver R. Stelle, John Catharine Adelaide Beekman, and William Z. Larned, executors of the last will and testament of Benjamin F. Beekman, deceased, citizens of New Jersey, &c., defendants.

This cause having come on for final hearing at the last term of the court, upon the pleadings and proofs therein, and having been argued before the honorable William McKennan and John T. Nixon, justices, by
143 Jacob Vanatta, of counsel for said defendants, and Cortlandt Parker, of counsel for said *court* complainants, and the court having duly considered the same and being of opinion that the complainants are entitled to the relief prayed for by their said bill of complaint, it is thereupon, on this twenty-third day of September, in the year one thousand eight hundred and seventy-nine, on motion of Cortlandt & R. Waine Parker, solicitors and of counsel for complainant, ordered, adjudged, and decreed that the several instruments mentioned in the bill of complaint in this cause, signed by John H. Anderson, Oliver R. Stelle, and John Guerin, commissioners, and issued by them on behalf of the Inhabitants of the Township of Bernards, in the county of Somerset aforesaid, the corporation

defendant, as the bonds of said corporation, but unto which said commissioners, by mistake or otherwise, neglected to affix their seals as by the statute required, are, notwithstanding said omission, the bonds of said township, to wit, the said corporation defendant; that the complainants are entitled to have the same respectively sealed, if such remedy were requisite, but such sealing not appearing to be necessary for adequate relief

it is therefore ordered, adjudged, and decreed that the said instru-
144 ments, and each of them shall at all times and in all places and for all purposes be held and taken to be valid and effectual in law, to the same extent as if the same had been in fact sealed by the said commissioners before issuing the same, and that the said The Inhabitants of the Township of Bernards, in the county of Somerset, the corporation defendant, be, and they are hereby perpetually enjoined from pleading, alleging, or proving as a defence, either in the suit at law mentioned in said bill of complaint, and now depending in this court, brought by the said complainants against the said defendant corporation, and wherein they have pleaded that the said bonds were not, nor was any of them, the deed of said corporation, or in any other suit now pending or hereafter to be brought, that the said bonds were not actually sealed by the commissioners who issued the same, or that the said bonds are not respectively the deed and deeds of said defendant corporation because no seals have been affixed to the names of the commissioners.

And it is further adjudged that the complainants do recover from
145 the Inhabitants of the Township of Bernards, one the parties defendants, their reasonable costs to be taxed.

JNO. T. NIXON, *J.*

Filed Sept. 30, 1879.

146 Circuit court of the United States, district of New Jersey. In equity.

BETWEEN THOMAS H. MORRISON & ALS., COMplainants, *and* THE INHABITANTS OF THE TOWNSHIP OF BERnards, in the county of Somerset & als., defendants.	On bill, &c.

This cause having been argued before the court by agreement between counsel on the pleadings therein, the evidence taken therein, and also upon the evidence taken in the case of Cyrus Curtis against the same defendants, so far as applicable, and appeal being taken from the decision made to the Supreme Court of the United States, it is now agreed that said cause shall be there argued and disposed of upon the same pleadings and proofs; that is to say, the bill of the complainant and other pleadings, the evi-
147 dence taken and printed in the cause, and so much of the evidence taken and printed in the case of Cyrus Curtis against the same defendant as is applicable to the issue between the parties.

Dated Trenton, November 18, 1879.

CORTLAND & R. WAYNE PARKER,
Solicitors & of Counsel for Compl'ts.

ALVAH A. CLARK,
Sol'r for & of Counsel with the Def'ts,
The Inhabitants of the Township of Bernards.

148 United States circuit court, district of New Jersey.

I, S. D. Oliphant, clerk of the United States circuit court, third circuit, district of New Jersey, do hereby certify the foregoing written and printed pages to be a true transcript of the record and proceedings in said suit, as fully as the same remain on file and of record in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court at office, at Trenton, in said district, this ninth day of October, in the year of our Lord eighteen hundred and eighty.

[SEAL.] S. D. OLIPHANT, *Clerk.*

149 The United States of America to Thomas H. Morrison and Gardner S. Hutchinson, survivors of Thos. A. Morrison, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a petition of appeal, filed in the clerk's office of the United States circuit court, district of New Jersey, wherein the inhabitants of the township of Bernards, of the county of Somerset, are appellants and you are appellees, to show cause, if any there be, why a decree lately rendered against the said appellants, as in the said petition of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John T. Nixon, judge of the United States district court for the State of New Jersey, this sixth day of December, in the year of our Lord one thousand eight hundred and seventy-nine.

[SEAL.] JNO. T. NIXON, *J.*

150 (Indorsed:) United States circuit court, dist. of N. J. In equity. The Inhabitants of the Township of Bernards, appellants, vs. Thos. H. Morrison et al. appellees. Citation. Filed Dec. 6, 1879 S. D. Oliphant, clerk.

Supreme Court U. S. 1880, October term. No. 958. Inhabitants of the Township of Bernards, appellant, vs. Thos. H. Morrison et al. Citation. Filed 19 March, 1881. (Stamp:) Office Supreme Court U. S. Filed Mar. 19, 1881. James H. McKenney, clerk.

I acknowledge due and legal service of the within citation upon the appellees within named. December 25th, 1879.

CORTLANDT PARKER,
Their Attorney and Solicitor.

151 Supreme Court of the United States.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, in the County of Somerset, appellants,
against
THOMAS H. MORRISON AND GARDNER S. Hutchinson, survivors of Thomas A. Morrison, appellees.

In equity. On appeal from the circuit court of the United States for the district of New Jersey.

Stipulation.

It is agreed and stipulated between the parties in this cause that the testimony taken on both sides in the case pending in said circuit court, and

tried and heard at the same time and place with this, to wit, the case of Cyrus Curtis, complainant, against said Inhabitants of the Township of Bernards, defendant, was, by agreement, used on the hearing of the cause in which the above-stated appeal was taken as if regulary taken therein; and that said testimony is to be printed as part of the case in this cause, and
152 to be used on the hearing of the above-stated appeal as if regularly returned therewith. Said testimony has been forwarded to the Supreme Court of the United States, in an appeal taken by the said The Inhabitants of the Township of Bernards against the said Cyrus Curtis, and is now on file with the clerk thereof.

Dated October 11th, 1880.

CORTLANDT PARKER,
Solicitor for Appellees.
ALVAH A. CLARK,
Sol'r. for Appellants.

(Indorsed:) Supreme Court U. S. 1880, October term. No. 958. The Inhabitants of the Township of Bernards, &c., app'l'ts, vs. Thos. H. Morrison et al. Stipulation that testimony in case of Inhabitants of Township of Bernards vs. Curtis, No. 957, be used in this case. Filed 19 March, 1881.

(Stamp:) Office Supreme Court U. S. Filed Mar. 19, 1881. James H. McKenney, clerk.

153 Supreme Court of the United States.

THE TOWNSHIP OF BERNARDS & OTHERS, defendants & appellants,
and
GEORGE N. STEBBINS, EXECUTOR OF CYRUS Curtiss, dec'd, complainant & respondent,

On appeal from decree of circuit court for the district of New Jersey.

THE TOWNSHIP OF BERNARDS & OTHERS, defendants & appellants,
and
THOMAS H MORRISON & OTHERS, COMPLAINants & respondents,

On appeal from decree of circuit court for the district of New Jersey.

It is agreed, in accordance with the oral agreement at the argument in the court below, that the evidence and exhibits taken in either of the above stated causes shall be considered as having been taken in each of them, and shall be so used on the hearing of these appeals so far as the same shall be competent and relevant; and further that the exhibits,
154 copies whereof are hereto annexed, shall be printed as a part of or appendix to the record in the Morrison case, and shall be used on the argument as if printed in each case.

Also that the act of the legislature of New Jersey, approved April 9, 1868, entitled "An act to authorize certain towns in the counties of Som-

erset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," as found in pamphlet laws of 1868 for New Jersey, at p. 915, et seq., be printed therewith. Also an act of the legislature of New Jersey, entitled "An act to change the name of the Passaic Valley and Peapack Railroad Company," approved February 15, 1870, as printed in the pamphlet laws of New Jersey for the year 1870, at p. 160; also the opinions of Judge Nixon, filed on the demurrer & on final hearing as hereto annexed.

Nov. 26, 1881.

HENRY O. PITNEY,
Sol. of Curtiss' Adm.
CORTLANDT PARKER,
Solicitor & of Counsel for Thos. N. Morrison & al.
155 ALVAH A. CLARK,
Sol'r of Def'ts, Bernards T'w'p.

156 COMPLAINANT'S EXHIBITS.

United States circuit court.

BETWEEN CYRUS CURTIS, COMPLAINANT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et als., defendants. } On bill, &c.

EXHIBIT C 47.

To the judge of the circuit court of the county of Somerset, in the State of New Jersey:

We, the undersigned, being twelve or more freeholders, residents of the township of Bernards, in said county, which township is situate along the route of the railroad of the Passaic Valley and Peapack Railroad Company, do hereby apply to the judge of the circuit court of the said county wherein said township is situated, to appoint under his hand and seal three freeholders, residents of such township, to be commissioners for such township, to carry into effect the purposes and provisions of the
157 act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, who shall hold their offices respectively for the term of five years, and until others shall be appointed.

Dated June , A. D. 1868.

Robert Blair.	Jacob K. Lewis.
John Mullen.	John Adamson.
James V. Bazure.	R. C. Bishop.
Thomas K. Heath.	Charles Barker.
Walter K. Sturgis.	Ira B. Prudden.
George Bender.	J. M. Fisher.
F. Thompson.	James L. Stevens.
Charles P. Crue.	Samuel Elsen.
James Allen.	James I. Hill.
I. W. Keeler.	A. F. Voorhies.
James H. Thompson.	S. R. D'Coster.

NEW JERSEY,
Somerset County, ss:

JOHN H. ANDERSON, being duly sworn, on his oath, says that he is personally acquainted with the persons whose names are attached to the foregoing application; that they are all freeholders and residents of the township of Bernards, in the county of Somerset, New Jersey, and that they severally signed said application in the presence of this deponent.

JOHN H. ANDERSON.

Sworn to and subscribed this 27th day of June, 1868, before me.

JAMES H. THOMPSON,
Justice of the Peace.

158 The State of New Jersey to all to whom these presents shall come, greeting:

The annexed application in writing of twelve and more freeholders, residents of the township of Bernards, in the county of Somerset and State of New Jersey, situate along the route of the railroad of the Passaic Valley and Peapack Railroad Company, having on the 27th day of June, 1868, at five o'clock p. m., been presented to me, VanCleve Dalrimple, judge of the circuit court of the said county of Somerset, at the court-house, in Morristown, New Jersey, I do hereby, in virtue of the requirements of the act of the legislature of said State entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, and in accordance with the provisions of said act appoint John H. Anderson, John Guerin, and Oliver R. Stelle, three freeholders, residents of such township of Bernards, to be commissioners of such township to carry into effect the purposes and provisions of the said act, who shall hold their offices respectively for the term of five years, and until others shall be appointed. In witness whereof I hereto set my hand and seal this sixth day of July, in the year eighteen hundred and sixty-eight, at Morristown aforesaid, it appearing to me by affidavit that notice of such application has been published in two newspapers, printed and published in Morris County, and in three newspapers printed and published in Somerset County.

V. DALRIMPLE, [L. S.]
Judge of the Circuit Court of the County of Somerset.

STATE OF NEW JERSEY,
Somerset County, ss:

I, Matthew H. Vanderveer, clerk of said county and clerk of the circuit court and inferior court of common pleas of the county of Somerset, do hereby certify that the foregoing is a true copy of the applica-
159 tion for and appointment of three freeholders, residents of the township of Bernards, to be commissioners for said township to carry into effect the purposes and provisions of a certain act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company, approved April 9th, 1868. Filed in my office July 10th, A. D. 1868.

In witness whereof I have hereunto set my hand and affixed the seal of said county this eighth day of March, A. D., 1876.

[L. S.] MATT. H. VANDERVEER, *Clerk.*

EXHIBIT C 48.

STATE OF NEW JERSEY,
Somerset County, ss:

I, John Guerin, do sincerely profess and swear that I do and will bear true faith and allegiance to the government established in this State under the authority of the people. So help me God.

JOHN GUERIN.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit of said County.

160 STATE OF NEW JERSEY,
Somerset County, ss:

I, John Guerin, do solemnly promise and swear that I will faithfully, impartially, and justly perform all the duties of the office of a commissioner for the township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the act of the Legislature of the State of New Jersey, entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868, according to the best of my abilities and understanding. So help me God.

JOHN GUERIN.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit Court of said County.

EXHIBIT C, 49.

STATE OF NEW JERSEY,
Somerset County, ss:

I, Oliver R. Still, do sincerely profess and swear that I do and will bear true faith and allegiance to the government established in this State under the authority of the people. So help me God.

OLIVER R. STELLE.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit of said County.

161 STATE OF NEW JERSEY,
Somerset County, ss:

I, Oliver R. Still, do solemnly promise and swear that I will faithfully, impartially, and justly perform all the duties of the office of a commissioner

for the township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the act of the Legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, according to the best of my abilities and understanding. So help me God.

OLIVER R. STELLE.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit Court of said County.

EXHIBIT C, 50.

STATE OF NEW JERSEY,
Somerset County, ss:

I, John H. Anderson, do sincerely profess and swear that I do and will bear true faith and allegiance to the government established in this state under the authority of the people. So help me God.

JOHN H. ANDERSON.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit Court of said County.

162 STATE OF NEW JERSEY,
Somerset County, ss:

I, John H. Anderson, do solemnly promise and swear that I will faithfully, impartially, and justlyper form all the duties of the office of a commissioner for the township of Bernard in the county of Somerset, to carry into effect the purposes and provisions of the act of the legislature of the State of New Jersey entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, according to the best of my abilities and understanding. So help me God.

JOHN H. ANDERSON.

Subscribed, taken, and sworn before me, at Somerville, July 10, 1868.

WILLIAM ROSS, JR.,
Clerk of the Circuit Court of said County.

STATE OF NEW JERSEY,
Somerset County, ss:

I, Matthew H. Vanderveer, clerk of the county of Somerset, and also clerk of the circuit court of said county, do hereby certify that the above is a true copy of the affidavits of John Guerin, Oliver R. Stelle, and John H. Anderson, filed in my office July 10, 1868.

In testimony whereof I have hereunto set my hand and affixed the seal of said court and county, December 31, 1877.

[L. S.] MATT. H. VANDERVEER, *Clerk.*

163 EXHIBIT C 52.

Guerin's list.

Thomas K. Heath	750
George Gidney	2,800
R. Irving	500
Wm. Noel Corbet	9,500
J. H. Osborn	4,200
John C. Cross	8,000
R. A. Sanders	800
D. L. Lewis	13,000
P. O. Belding	2,800
Am't	42,350

Eli Howlet	1,600
John Dayton	6,000
Ausg't Moore, adms' Moore, dec'd	2,000
D. D. Craig	9,500
Jas. Allen, Arminda Blair, Wm. B. Cooper	1,000
Chas. Grenlock	2,700
Am't	22,800

Henry Winne	3,300
R. C. Bishop	900
Israel Bedell	7,500
Samuel Elden	300
164 O. Conkling	3,500
J. J. Allen	3,000
J. H. Thompson	8,000
Pat. Moore	1,600
Am't	28,100

J. Hippenmeyer	2,500
J. H. Lyon	11,000
Joseph Alward	7,500
J. V. Stewart	800
A. T. Albro	10,500
Peter A. Layton	4,200
H. H. Apgar	5,500
D. H. Powelson	2,800
C. P. Crew	9,000
J. M. Fisher	5,800
Am't	59,600

J. C. Latowrette	6,500
J. B. Pruden	5,000
S. R. De Coster	2,450
D. F. Dunham	1,250
A. F. Voorhees	2,500
M. Willson	1,000
John Adamson	4,000
J. S. Stevens	2,000
Benj. Towson	3,500
Jo. Stantial	4,800
J. L. Simpson	3,200
Rich. Murphy	2,000
165 L. V. Davis	
Aaron Dilly	3,500
J. E. Heldebrant	4,800
J. Layton	3,200
Robert Bryan	200
Am't	49,900

John Dow	700
A. P. Layton	4,200
F. Thompson	4,000
Henry W. Augleman	
C. M. Space	1,000
B. Geroghty	
John G. West	9,500
S. C. Dayton	3,000
Am't	22,400

	42,350	49,900
	22,800	34,150
	28,100	4,900
	7,750	14,050
	24,000	22,400
	37,900	12,370
	59,600	
	222,500	137,770

Stelle's list.

O. R. Stelle	8,000
Thos. Terrell	3,500
C. A. Smylie	2,500
D. Kline	2,600
166 R. B. Cooke	700
P. S. Benbrook	3,500
Helen Hunter	
Am't	20,800

5,750
20,800

26,550. Stelle's am't.

Anderson's list

J. H. Anderson	5,500
C. S. Quimby	4,000
Brad. Guerin	8,000
Rod. A. Mitchell	5,000
Rob't Hanna	
Wm. Amerman	200
Dan. S. Doty	3,000
John S. Quimby	4,200
W. A. McMurtry	9,000
Am't	38,900

Thomas Bird	600
John O. Rush	2,500
Thom G. Bunn	
Hugh R. Bunn	4,400
Wm. Barker	400
Chas. Barker	8,600
Con. Smith	1,300
Garret V. Freeman	8,000
Jas. W. Bunn	2,500
Am't.	28,300

Mich. Donovan	350
J. Compton	2,000

D. McDermott	700
Chas. Butler	
A. V. Stevens	1,200
R. Galtea	1,600
E. A. Doty	800
C. S. De Coster, adm'r of P. S. Colyer est	400
Nath. Compton	700
Am't	7,750
J. Van Arsdale	700
John Rickey	2,000
Maranda Gillispey	
C. Thompson	5,700
C. S. De Coster	5,000
S. S. Adamson	2,000
Carl. Kampfirmer	1,000
J. L. Van Liew	7,600
Am't	24,000
W. H. Dikeman	8,000
A. Moore	100
Wm. Allen	
Robert Blair	3,800
S. C. Dayton	3,000
John Guerin	10,000
Corn. Winne	9,000
F. Pennington	4,000
Am't	37,900
Henry Brien	800
Tunis Dilly	3,500
E. C. Dayton	3,000
J. Conkling	9,000
John R. Gillispie	2,100
Chas. Crew	1,600
W. B. McMurtry	6,500
J. P. Harris	2,500
Ezra Dayton	3,700
Thom. B. Ayers	450
A. E. Webster	
W. B. Cooper	1,000
Am't	34,150
P. L. Cooper	
Eliza W. Lewis	1,200
P. Mullener	1,000
C. L. Overton	600
M. Van Allen	
Rosa J. Doty	2,100
Am't	4,900
Hannah Feeney	400
John Henry	1,800
Pat. Gougherty	2,800
Henry Fulkison	450
Mich. Newman	1,000
The. Baird	5,500
John Hines	600
P. P. Melick	1,500
Am't	14,050
Isaac Duvall	
D. M. Arrowsmith	3,270
J. P. Hand	800
J. P. Weinman	
F. J. Van Wagner	1,000
W. A. Heath	6,000
Wm. Pope	500
Jas. I. Hill	800
Am't	
	222,500
	137,770
	360,270. Am't of Guerin's.
Joseph Armin	
L. McKenna	500
W. V. D. Layton	1,500
J. Wickenhoper	750
John Lare, jr	
J. B. Skinner	3,000
Geo. Redford	
Am't	5,750
A. B. McCollum	5,000
Edw. Hight	1,600
Wm. Collyer	
Corn. Collyer	425
H. W. Ryeall	
Jacob Cole	6,000
Christiana Petty	
J. L. Smith	5,000
C. H. Dunham	5,000
Rob't McMurtry	2,800
Am't	25,825
Jas. McMurtry	2,800
David S. Dunn	450
John H. Whitnack	3,000
Peter Welsh	9,000
Henry Dunum	9,000
Wm. Demun	8,000
John Voorhees	8,300
A. McWilliams	2,200
Am't	42,750
167 S. S. Vorhees	11,000
Edw. S. Janes	19,500
M. Bloodgood	5,000
Henry Baird	2,000
Jos. H. Whitnack	3,000
Wm. Hamler	400
Eliza Ballentine	5,000
Jos. H. Winget	4,500
Am't	50,400
David Van Ness	1,100
Hugh Sheridan	400
John Mullen	6,000
John Maher	
Ann M. Blazure	
G. T. Bunn	2,500
D. H. Layton	3,200
Jas. Blazure	2,000
D. D. Savadge	3,500
Am't	18,700

S. S. Stout	800
Josiah Ludlow	1,000
E. M. Bedell	600
Henry Ludlow	4,200
John Scally	2,150
J. H. McCollum	2,500
W. K. Sturgis	3,800
M. P. Crater	600
John B. Dunster	2,050
Am't	17,700
168 John L. Hall	5,000
A. S. Cole	6,000
J. McCollum	4,800
Luther Axtell	2,100
Mary Isaacs	650
Mich. Linehen	350
Francis Oliver	2,200
John Y. Marsh	1,700
Am't	22,800
Conrad Weber	1,000
Peter Z. Smith	400
Wm. Ballentine, jr	3,260
Erastus Ballentine	2,700
Am't	7,360
John Shoats	250
Pat. Gougherty	2,800
Wm. Lawrence	900
Wm. Ballentine	3,200
J. G. Ballentine	3,000
L. H. Bird	300
Wm. S. Frost	4,500
Wm. Ryeall	1,300
Am't	16,250
The. Woodward	4,000
Mich. Havey	200
J. H. Harris	2,500
George Buttz	2,200
Thomas Liddy	
Mich. Norris	
Hannah Bird	
O. Woodward	7,500
Ferd. Van Doren	14,000
Wm. Reynolds	1,100
A. McMurtry	5,000
Am't	36,500
Wm. Childs	16,000
Peter D. Cross	4,000
John T. Bair	
Ellen Blin	
Oliver Dunster	9,000
Ogden Allen	500
Jacob Wadnow	
Am't	29,500
Daniel Martin	1,700
Job Compton	2,000
Amos M. Douglas	2,600
D. G. Schomp	7,500
S. N. T. Meeker	1,000
Abe Quimby	2,600
Joseph Murphy	500
John V. Bunn	2,500
Am't	20,400
Am't forward No. 1	38,900
" 2	28,300
" 3	50,400
" 4	25,825
" 5	42,750
" 6	16,250
" 7	18,700
" 8	17,700
" 9	22,800
" 10	36,500
" 12	20,400
No. 11	29,500
No. 13	7,360
Whole am't	$355,385

For the year 1868: D.

Am't of Anderson's	355,385
" " Guerin's	360,270
" " Stelle's	26,550
Whole am't	742,205

169 The year 1867:

Anderson	108	persons.
Guerin	120	"
Stelle	14	"
Am't	242	persons.

The year '68:

Anderson	83	persons.
Guerin	84	"

Stelle ..... 7 "

Am't..... ..... 174 persons.

242
174

Am't for the two years, 416 per's.

Whole number who subscribed for bonding, 1868..... 242
" " " " " " 174

416
33

383
376

7

	Names.	Poll.
Whole number of names, 1866.....	756	571
" " " " 1867.....	816	
" " " " 1868.....	814	551

170

551
Subscribed 1867 & 1868..... 383

168 2)934

467
Names 1866..... 2)756 383

378 84
2

168

Amount of duplicate, 1867..... 1,281,455
" " " 1868..... 1,327,765

2)1,327,765

663,882

742,205
663,882

78,323

1,327,765
1,281,455

46,310

1,448,000	1,281,455
742,205	742,205
705,795	539,250
36,410	202,955

171 EXHIBIT C 53.

Proxy.

Know all men by these presents that we, the commissioners of the Township of Bernard, county of Somerset, do hereby constitute and appoint John H. Anderson our attorney and agent for us and in our name, place, and stead, to vote as our proxy at any election of directors of the Passaic Valley and Peapack Railroad Company, according to the number of votes said township should be entitled to vote if then personally present.

In witness whereof we have hereunto set our hands and seals this ninth day of June, one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON. [L. S.]
OLIVER R. STELLE. [L. S.]
JOHN GUERIN. [L. S.]

Sealed and delivered in the presence of—

[Stamp.]

(Paper annexed containing following names:)

John H. Lyon.	J. B. Bassinger.	Joseph Alward.
I. Condict Smith.	Sam. B. Smith.	Jarris Johnson.
D. D. Craig.	John H. Anderson.	Chas. N. Lockwood.

172 EXHIBIT C 58.

Certificate of stock.

No. 96.] STATE OF NEW JERSEY. [2,400 shares.

NEW JERSEY WEST LINE RAILROAD COMPANY.

This is to certify that the Township of Bernards, of Somerset County, N. Jersey, entitled to twenty-four hundred (2,400) shares of the capital stock of the New Jersey West Line Railroad Company, transferable only on the books of the company at their office by it or its attorney or commissioners, upon surrender of this certificate.

In testimony whereof the said company have caused this certificate to be signed by their president and secretary and the seal to be affixed.

Newark, N. J., March 3rd, 1873.

[L. S.] B. I. BEEKMAN, *President.*

F. F. VANDERVEER, *Secretary.*

[Stamp.]

(Endorsed:)
For value received hereby sell, assign, and transfer unto shares of the within stock, and authorize to transfer the same on the books of the company.
Dated this day of , 18 .
In presence of—

(NOTE.—On each side:) "Shares, $50 each."

173 EXHIBIT C 59.

Certificate of stock.

No. 107.] STATE OF NEW JERSEY. [shares.

NEW JERSEY WEST LINE RAILROAD COMPANY.

This is to certify that the Township of Bernards, of Somerset County, N. J., is entitled to fifty-two shares of the capital stock of the New Jersey West Line Railroad Company, transferable only on the books of the company at their office by it or its attorney or commissioners, upon surrender of this certificate.

In testimony whereof the said company have caused this certificate to be signed by their president and secretary and the seal to be affixed.

Bernardsville, N. J., December 26th, 1873.

[L. S.] B. I. BEEKMAN, *President.*

WM. FERGUSON, *Secretary.*

[Stamp.]

(Endorsed:)
For value received, hereby sell, assign, and transfer unto shares of the within stock, and authorize to transfer the same on the books of the company.
Dated this day of , 18 .
In presence of—

(NOTE.—On each side in margin:) "Shares, $50 each."

174 *Exhibit 60 on the part of the complainant.*

United States circuit court. In equity.

BETWEEN CYRUS CURTIS, COMPLAINANT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et als., defendants.

Certified copy of the book of registry of bonds, Township of Bernards, Somerset County, New Jersey.

The Inhabitants of the Township of Bernards, in the county of Somerset, acknowledge themselves to owe to bearer one thousand dollars, which sum

they promise to pay the holder hereof at the American Exchange National Bank, in the city of New York, six years after the date hereof, and also interest thereon at the rate of seven per cent. per annum, payable semi-annually on the first days of July and January in each year, until
175 the said principal sum shall be paid, on the presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred and twenty-seven thousand dollars, issued on the faith and credit of said township, in pursuance of an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9th, 1868.

In testimony whereof the undersigned commissioners of the said Township of Bernards, in the county of Somerset, to carry into effect the purposes and provisions of the said act, duly appointed, commissioned, and sworn, have hereunto set our hands and seals the first day of January, in the year of our Lord one thousand eight hundred and sixty-nine.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

Bond No. 1, $1,000	Six years' coupons attached.....	12
" " 2, $1,000		12
" " 3, $1,000		12
" " 4, $1,000		12
" " 5, $1,000	Seven years' coupons attached.....	14
" " 6, $1,000		14
" " 7, $1,000		14
" " 8, $1,000	Eight years' coupons attached.....	16
" " 9, $1,000		16
" " 10, $1,000		16
" " 11, $1,000	Nine years' coupons attached.....	18
" " 12, $1,000		18
" " 13, $1,000		18
" " 14, $1,000	Ten years' coupons attached.....	20
" " 15, $1,000		20
" " 16, $1,000		20
" " 17, $1,000		20
176 Bond No. 18, $1,000	Eleven years' coupons attached.....	22
" " 19, $1,000		22
" " 20, $1,000		22
" " 66, $500	Six years' coupons attached.....	12
" " 67, $500		12
" " 68, $500		12
" " 69, $500		12

"	"	70,	$500	Seven years' coupons attached.....	14
"	"	71,	$500		14
"	"	72,	$500		14
"	"	73,	$500		14
"	"	146,	$100	Six years coupons attached.....	12
"	"	147,	$100		12
"	"	148,	$100		12
"	"	149,	$100		12
"	"	150,	$100		12
"	"	151,	$100		12
"	"	152,	$100		12
"	"	153,	$100		12
"	"	154,	$100		12
"	"	155,	$100		12
"	"	156,	$100		12
"	"	157,	$100	Seven years' coupons attached	14
"	"	158,	$100		14
"	"	159,	$100		14

The above-described bonds registered January 18, 1869.

WILLIAM ROSS, JR., *Clerk.*

BERNARDS TOWNSHIP.

Bond No.		21,	$1,000	Twelve years.....	24
"	"	22,	$1,000		24
"	"	23,	$1,000		24
"	"	24,	$1,000		24
"	"	25,	$1,000	Thirteen years.....	26
"	"	26,	$1,000		26
177 Bond No.		74,	$500	Eight years	16
"	"	75,	$500		16
"	"	76,	$500		16
"	"	77,	$500		16
"	"	78,	$500	Nine years	18
"	"	79,	$500		18
"	"	80,	$500		18
"	"	81,	$500		18

The above-described bonds were registered September 4th, 1869.

WILLIAM ROSS, JR., *Clerk.*

BERNARDS TOWNSHIP, *October* 12, 1869.

Bond No.		27,	$1,000	.....	26
"	"	28,	$1,000	Fourteen years	28
"	"	29,	$1,000		28
"	"	30,	$1,000		28

	"	"	31, $1,000	Fourteen years	30
	"	"	32, $1,000		30
	"	"	33, $1,000		30
	"	"	34, $1,000	Sixteen years	32
	"	"	35, $1,000		32
	"	"	36, $1,000		32
	"	"	37, $1,000		32
	"	"	38, $1,000	Seventeen years	34
	"	"	39, $1,000		34
	"	"	40, $1,000		34
	"	"	41, $1,000	Eighteen years	36
	"	"	42, $1,000		36
	"	"	43, $1,000		36
	"	"	44, $1,000	Nineteen years	38
	"	"	45, $1,000		38
	"	"	46, $1,000		38
178	Bond No.		82, $500	Ten years	20
	"	"	83, $500		20
	"	"	84, $500		20
	"	"	85, $500		20
	"	"	86, $500	Eleven years	22
	"	"	87, $500		22
	"	"	88, $500		22
	"	"	89, $500		22
	"	"	90, $500	Twelve years	24
	"	"	91, $500		24
	"	"	92, $500		24
	"	"	93, $500		24
	"	"	94, $500	Thirteen years	26
	"	"	95, $500		26
	"	"	96, $500		26
	"	"	97, $500		26
	"	"	98, $500	Fourteen years	28
	"	"	99, $500		28
	"	"	100, $500		28
	"	"	101, $500		28
	"	"	102, $500	Fifteen years	30
	"	"	103, $500		30
	"	"	104, $500		30
	"	"	105, $500		30

	"	"	106, $500	Sixteen years	32
	"	"	107, $500		32
	"	"	108, $500		32
	"	"	109, $500		32
	"	"	110, $500	Seventeen years	34
	"	"	111, $500		34
	"	"	112, $500		34
	"	"	113, $500		34
	"	"	114, $500	Eighteen years	36
	"	"	115, $500		36
	"	"	116, $500		36
	"	"	117, $500		36
	"	"	118, $500	Nineteen years	38
	"	"	119, $500		38
	"	"	120, $500		38
	"	"	121, $500		38
179	Bond No. 122, $500, twenty years				40
	"	"	160, $100	Seven years	14
	"	"	161, $100		14
	"	"	162, $100		14
	"	"	163, $100		14
	"	"	164, $100		14
	"	"	165, $100		14
	"	"	166, $100		14
	"	"	167, $100		14
	"	"	168, $100	Eight years	16
	"	"	169, $100		16
	"	"	170, $100		16
	"	"	171, $100		16
	"	"	172, $100		16
	"	"	173, $100		16
	"	"	174, $100		16
	"	"	175, $100		16
	"	"	176, $100		16
	"	"	177, $100		16
	"	"	178, $100		16
	"	"	179, $100	Nine years	18
	"	"	180, $100		18
	"	"	181, $100		18
	"	"	182, $100		18
	"	"	183, $100		18
	"	"	184, $100		18
	"	"	185, $100		18
	"	"	186, $100		18
	"	"	187, $100		18
	"	"	188, $100		18
	"	"	189, $100		18

"	"	190, $100	Ten years	20
"	"	191, $100		20
"	"	192, $100		20
"	"	193, $100		20
"	"	194, $100		20
"	"	195, $100		20
"	"	196, $100		20
"	"	197, $100		20
"	"	198, $100		20
"	"	199, $100		20
"	"	200, $100		20

180 Bond No.		201, $100	Eleven years	22
"	"	202, $100		22
"	"	203, $100		22
"	"	204, $100		22
"	"	205, $100		22
"	"	206, $100		22
"	"	207, $100		22
"	"	208, $100		22
"	"	209, $100		22

Registered October 12, 1869.

WILLIAM ROSS, JR., *Clerk.*

BERNARDS TOWNSHIP, *March* 21, 1870.

Bond No.	47, $1,000	Twenty years' coupons	40
" "	48, $1,000		
" "	49, $1,000		
" "	50, $1,000	Twenty-one years	42
" "	51, $1,000		
" "	52, $1,000		
" "	53, $1,000	Twenty-two years	44
" "	54, $1,000		
" "	55, $1,000		
" "	56, $1,000	Twenty-three years	46
" "	57, $1,000		
" "	58, $1,000		
" "	59, $1,000	Twenty-four years	48
" "	60, $1,000		
" "	61, $1,000		
" "	62, $1,000	Twenty-five years	50
" "	63, $1,000		
" "	64, $1,000		
" "	65, $1,000		

181	Bond No.	123,	$500	
	" "	124,	$500	
	" "	125,	$500	Twenty-one years..... 42
	" "	126,	$500	
	" "	127,	$500	
	" "	128,	$500	
	" "	129,	$500	
	" "	130,	$500	Twenty-two years..... 44
	" "	131,	$500	
	" "	132,	$500	
	" "	133,	$500	
	" "	134,	$500	
	" "	135,	$500	Twenty-three years..... 46
	" "	136,	$500	
	" "	137,	$500	
	" "	138,	$500	
	" "	139,	$500	
	" "	140,	$500	Twenty-four years..... 48
	" "	141,	$500	
	" "	142,	$500	
	" "	143,	$500	
	" "	144,	$500	Twenty-five years..... 50
	" "	145,	$500	
	" "	210,	$100	
	" "	211,	$100	
	" "	212,	$100	
	" "	213,	$100	
	" "	214,	$100	
	" "	215,	$100	
	" "	216,	$100	Twelve years..... 24
	" "	217,	$100	
	" "	218,	$100	
	" "	219,	$100	
	" "	220,	$100	
	" "	221,	$100	
	" "	222,	$100	
182	Bond No.	223,	$100	
	" "	224,	$100	
	" "	225,	$100	
	" "	226,	$100	
	" "	227,	$100	
	" "	228,	$100	Thirteen years..... 26
	" "	229,	$100	
	" "	230,	$100	
	" "	231,	$100	
	" "	232,	$100	
	" "	233,	$100	

	"	" 234,	$100	
	"	" 235,	$100	
	"	" 236,	$100	
	"	" 237,	$100	
	"	" 238,	$100	
	"	" 239,	$100	Fourteen years..... 28
	"	" 240,	$100	
	"	" 241,	$100	
	"	" 242,	$100	
	"	" 243,	$100	
	"	" 244,	$100	
	"	" 245,	$100	
	"	" 246,	$100	
	"	" 247,	$100	
	"	" 248,	$100	
	"	" 249,	$100	
	"	" 250,	$100	Fifteen years..... 30
	"	" 251,	$100	
	"	" 252,	$100	
	"	" 253,	$100	
	"	" 254,	$100	
	"	" 255,	$100	
	"	" 256,	$100	
	"	" 257,	$100	
	"	" 258,	$100	
	"	" 259,	$100	
	"	" 260,	$100	
	"	" 261,	$100	Sixteen years..... 32
	"	" 262,	$100	
	"	" 263,	$100	
	"	" 264,	$100	
	"	" 265,	$100	
183	Bond No.	266,	$100	
	"	" 267,	$100	
	"	" 268,	$100	
	"	" 269,	$100	
	"	" 270,	$100	
	"	" 271,	$100	Seventeen years..... 34
	"	" 272,	$100	
	"	" 273,	$100	
	"	" 274,	$100	
	"	" 275,	$100	
	"	" 276,	$100	

	"	"	277,	$100	
	"	"	278,	$100	
	"	"	279,	$100	
	"	"	280,	$100	
	"	"	281,	$100	
	"	"	282,	$100	Eighteen years..... 36
	"	"	283,	$100	
	"	"	284,	$100	
	"	"	285,	$100	
	"	"	286,	$100	
	"	"	287,	$100	
	"	"	288,	$100	
	"	"	289,	$100	
	"	"	290,	$100	
	"	"	291,	$100	
	"	"	292,	$100	
	"	"	293,	$100	Nineteen years..... 38
	"	"	294,	$100	
	"	"	295,	$100	
	"	"	296,	$100	
	"	"	297,	$100	
	"	"	298,	$100	
	"	"	299,	$100	
	"	"	300,	$100	
	"	"	301,	$100	
	"	"	302,	$100	
	"	"	303,	$100	
	"	"	304,	$100	Twenty years..... 40
	"	"	305,	$100	
	"	"	306,	$100	
	"	"	307,	$100	
	"	"	308,	$100	
	"	"	309,	$100	
184	Bond	No.	310,	$100	
	"	"	311,	$100	
	"	"	312,	$100	
	"	"	313,	$100	
	"	"	314,	$100	
	"	"	315,	$100	Twenty-one years..... 42
	"	"	316,	$100	
	"	"	317,	$100	
	"	"	318,	$100	
	"	"	319,	$100	
	"	"	320,	$100	

	" "	321,	$100	
	" "	322,	$100	
	" "	323,	$100	
	" "	324,	$100	
	" "	325,	$100	
	" "	326,	$100	Twenty-two years..... 44
	" "	327,	$100	
	" "	328,	$100	
	" "	329,	$100	
	" "	330,	$100	
	" "	331,	$100	
	" "	332,	$100	
	" "	333,	$100	
	" "	334,	$100	
	" "	335,	$100	
	" "	336,	$100	
	" "	337,	$100	Twenty-three years..... 46
	" "	338,	$100	
	" "	339,	$100	
	" "	340,	$100	
	" "	341,	$100	
	" "	342,	$100	
	" "	343,	$100	
	" "	344,	$100	
	" "	345,	$100	
	" "	346,	$100	
	" "	347,	$100	
	" "	348,	$100	Twenty-four years..... 48
	" "	349,	$100	
	" "	350,	$100	
	" "	351,	$100	
	" "	352,	$100	
	" "	353,	$100	
185	Bond No.	354,	$100	
	" "	355,	$100	
	" "	356,	$100	
	" "	357,	$100	
	" "	358,	$100	
	" "	359,	$100	
	" "	360,	$100	Twenty-five years..... 50
	" "	361,	$100	
	" "	362,	$100	
	" "	363,	$100	
	" "	364,	$100	
	" "	365,	$100	

Registered March 21st, A. D. 1870.

WILLIAM ROSS, JR., *Clerk.*

STATE OF NEW JERSEY,
Somerset County, ss:

I, Matthew H. Vanderveer, clerk of said county, do hereby certify that the foregoing is a true, full, and correct copy of the registry of bonds of the Township of Bernards, in the county of Somerset, of record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said county, at the clerk's office in Somerville, this twenty-seventh day of March, A. D. 1879.

[SEAL.] MATT. H. VANDERVEER, *Clerk.*

186 DEFENDANTS' EXHIBITS.

U. S. circuit court, district of New Jersey.

BETWEEN CYRUS CURTIS, COMPLAINANT,
and
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et als., defendants. } On bill, &c.

EXHIBIT B 1.

Agreement entered into the day of October, in the year eighteen hundred and seventy-two, between those persons whose names are hereunder written witnesseth:

Whereas the undersigned are severally the owners and holders of certain bonds issued by the Township of Bernards, in the county of Somerset and State of New Jersey, in aid of the Passaic Valley and Peapack Railroad, the amount of said bonds held by each being shown opposite to his or her signature;

187 And whereas certain interest coupons of said bonds are due and unpaid, and the undersigned are desirous of collecting the same and anticipate litigation, difficulty, and expense in so doing, and therefore deem it expedient and mutually advantageous to combine together and share the expense of such litigation:

Now, therefore, we, the undersigned, do combine together for the purpose aforesaid, and we do hereby assign and transfer to Cyrus Curtiss, of the city of New York, all the coupons so past due and held by us, as our trustee, and we do authorize and instruct said Cyrus Curtiss to proceed to take such legal advice and employ such counsel in the premises as he shall think best for our interest, and to bring such suit or suits or take such legal proceedings to enforce the payment of such overdue coupons as he shall be advised is proper and expedient.

And we do agree to and with said Curtiss and each with the other to indemnify and save harmless our said trustee in the premises from time to time and at all times, and to pay to him such sum or sums of money, as often as he shall call for the same, as shall keep him supplied with the funds necessary for the purpose aforesaid, such payments to be divided between us in proportion to the amount of said bonds so held by each of us.

And the said Cyrus Curtiss hereby accepts said trust and employment, and agrees to carry out the same to the best of his skill and ability.

CYRUS CURTISS. [L. S.]

Witness to signature of Cyrus Curtiss—
W. A. BREWER, JR.

	MATTHEW MITCHELL,	[L. S.]	five hundred dollars.
	H. B. STONE,	[L. S.]	three thousand dollars.
	H. O. MARSH,	[L. S.]	five hundred dollars.
	C. H. MULFORD,	[L. S.]	one thousand dollars.
188	J. J. COOPER,	[L. S.]	four thousand dollars.
	HENRY BALL,	[L. S.]	four thousand dollars.
	EDWIN FORD,	[L. S.]	two thousand dollars.
	JAMES HOLMES,	[L. S.]	two thousand dollars.
	GEO. A. LAWRENCE,	[L. S.]	four hundred dollars.
	LEWIS C. BURROUGHS,	[L. S.]	eight hundred dollars.

EXHIBIT B 2.

The undersigned tax-payers of Bernards Township hereby give notice to all persons that we will take and use all lawful ways and means, now and hereafter, to defend ourselves against any tax that may be hereafter imposed to pay interest or principal on any bonds of said township issued, to take stock in Passaic Valley and Peapack Railroad Company, believing said bonds to be unjust and illegal.

Dec. 3, 1869.

JOHN G. SCHWARTZ.
TUNIS VANNESS.
ADRIAN V. KING.
PHILIP SKINNER.
WILLIAM SMITH.
JOSHUA TOTTEN.
GEORGE W. TOTTEN.
189 CHARLES H. TOTTEN.
GEORGE E. QUIMBY.
WILLIAM W. BENBROOK.
EDWARD BENBROOK.
WILLIAM MCBRIDE.
JOHN C. AMERMAN.
DAVID KLINE.
RICHARD AMERMAN.
WILLIAM WIGGIN.
CHARLES BEMBROOK.
PAUL AMMERMAN.
GEROE W. PERRINE.

EXHIBIT B 3.

MILLINGTON, N. J., *May* 8, 1872.

Mr. A. PACKER:

DEAR SIR: I regret that I did not get the notice in time to attend the meeting of the board the 30th ult.

I have felt for some time that I should like an interview with you, and having failed pardon me now for addressing you on the subject of our town stock. And, first, I would say that my position as commissioner is very unenviable, growing out of the fact that the early pledges and promises that were made to us commissioners and by us to the township have long since proved to be worthless, and very many that signed for the bonding of the townships do feel that their signatures were obtained through false presentations, not to say fraudulent means.

I will now name but two to explain the above. I worked faithfully for the bonding of Bernards, upon the ground that none should be
190 bonded unless all the townships on the line of the road complied, thereby securing stock enough to build said road.

And, second, as I intimated, the road was to be built by stock and no

R. R. bonds hanging upon us when completed. You are aware how much of this has been realized. These and others are the grounds of repudiation.

I regret exceedingly that the township of Bernards takes this suicidal stand, which I doubt not will in the end result in the payment of the bonds with heavy costs.

Now, Judge Parker, I feel to solicit your aid in this our extremity. Can you not make some arrangement to take our stock and redeem our bonds? The bonds can now be bought very much below their face value. It does seem unjust that Bernards and New Providence alone should be thus burdened, while all others alike benefitted with us should escape all embarrassment.

You are aware that upon taking the direction of the road last June that you promised to protect the town stock, and I doubt not your integrity to fulfil in just the spirit in which you made it, and again let me ask is not the present a favorable time for you and the township to confer harmoniously together and lift the cloud of our embarrassment and let the light of your protection shine upon us? Could you not do it as cheaply now as ever?

What do you consider our stock worth or what will you give for our stock under the present circumstances, and thereby control the stock as you now do a large portion of the first-mortgage bonds. I only add that I have tried to shape all my official acts in the light of judgment and justice to the township of Bernards, and shall ever hold myself in readiness to council, work, and even sacrifice personally for the township I represent.

Trusting you will consider the above and write me an early reply,

I remain yours, most truly,

O. R. STELLE, *Millington.*

P. S. In case you are indisposed to relieve the township by compromise or otherwise, where do you propose to place our town stock in case of a foreclosure of the mortgage bonds?

Yours, &c.

191 EXHIBIT B 4.

To the township committee of the township of Bernards, in the county of Somerset, N. J.:

The undersigned, commissioners appointed to subscribe and take stock in the Passaic Valley and Peapack Railroad (now the New Jersey West Line Railroad) report that they subscribed for and took for the township of Bernards twenty-five hundred and forty shares of the stock of the said railroad, amounting to one hundred and twenty-seven thousand dollars, and gave bonds of the township for that amount to the said railroad company for the said stock; they also made an agreement with the said company for the said company to pay the interest on the said bonds as it became due for the term of three years from the time of issuing the same, and the said company did pay the interest on the same until the first of January, 1871; since that time they have refused to pay said interest, and the same is still due and unpaid; the said interest is payable semi-annually, of the first days of July and January; and as there are two payments now due, and a half year becoming due on the first of July, and one in January,

1873, it is requisite for the township committee to make an arrangement to meet not only the interest of last year that is now due, but to make provision for the interest for the present year as the same becomes due. Said amount of interest payable semi-annually is four thousand four hundred and forty-five dollars, making eight thousand eight hundred and ninety dollars now due for the past year; and the sum of eight thousand eight hundred and ninety dollars to be provided for, to meet the July and January interest as it becomes due the present year.

Dated April 15th, 1872.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

192 EXHIBIT B 5.

Received from the commissioners of the township of Bernard the following bonds of said township, issued under the act of the legislature of the State of New Jersey, approved April 9, 1868, authorizing said township to issue bonds and take stock in the Passaic Valley & Peapack Railroad Company, the said bonds being the first installment paid to the treasurer of said company under a resolution of the board of directors, passed on 10th Decem., 1868, viz:

Ten (10) bonds of one thousand (1,000) dollars each, No. 1 to 10 inclusive; and No. 66 to No. 69 inclusive, four (4) bonds of five hundred (500) dollars each; and No. 146 to 152 inclusive, seven (7) bonds of one hundred (100) dollars each, amounting in the whole to twenty-one bonds and representing twelve thousand seven hundred (12,700) dollars. The same being received by the company at the par value thereof as the first installment of ten per cent. under the above-named call by the board of directors.

DAN'L D. CRAIG,
Treas. P. V. & P. P. R. R. Co.

Dated January 16, 1869.

EXHIBIT B 6.

Received from the commissioners of the township of Bernard the following bonds of said township, which I promise to have registered
193 in the county clerk's office of Somerset County and returned to the said commissioners, viz:

No. 11 to No. 20 inclusive, ten (10) bonds of one thousand (1,000) dollars each; from No. 70 to 73 inclusive, four (4) bonds of five hundred dollars each; and No. 153 to 159 inclusive, seven (7) bonds of one hundred (100) dollars each, making in the whole twenty-one (21) bonds and representing twelve thousand seven hundred dollars.

DAN'L D. CRAIG,
Treas. P. V. & P. P. R. R. Co.

Dated January 16, 1869.

EXHIBIT B 7.

BERNARD TOWNSHIP.

No. 1 to No. 65 inclusive,	65	bonds of	$1,000	$65,000
No. 66 to No. 145 inclusive,	80	bonds of	500	40,000
No. 146 to 365 inclusive,	220	" of	100	22,000
	365			$127,000
				25,400
				101,600

January 16th, '69, signed bonds to the amount of..... $25,400

$1,000 bonds,	20	$20,000
$500 "	8	4,000
$100 "	14	1,400
		$25,400
		20
		508 00

194 EXHIBIT B 8.

NEW JERSEY WEST LINE RAILROAD.

The fifth annual meeting of the stockholders of the New Jersey West Line Railroad was held in the office of the company, 445 Broad street, Wednesday. The meeting was called to order by Judge Anderson, president of the board of directors, about sixty persons being present.

The following board of directors was elected: Asa Packer, Robt. H. Sayre, Charles Hartshorne, J. B. Bassinger, Benj. G. Clarke, H. E. Packer, John H. Lyon, John C. Littell, Oliver R. Stelle, they having received all the votes polled, or 10,432.

The following letter from Asa Packer was read and received with applause:

The town commissioners of Bernards and New Providence have given their proxies and the direction of the New Jersey West Line Railroad Company to the Hon. Asa Packer, upon the general understanding with him that he will complete said railroad as an independent through road, at least from Bernardsville to Newark within a reasonable time, say eighteen months from this date, and that he will protect the town stock.

(Signed) ASA PACKER.

Officers to serve for the ensuing year were elected as follows: Asa Packer, president; Robt. H. Sayre, vice-president; S. H. Bassinger, treasurer pro tem.; Thos. N. McCarter, secretary pro tem.

Mr. Packer, Mr. Sayre, Mr. Hartshorne, and Mr. Packer, jr., are all connected with the Lehigh Valley Railroad, while the remaining four directors represent the townships through which the line runs.

195 EXHIBIT B 10.

Deed.—Bennington F. Randolph, master, &c., to Rosewell G. Ralston.

This indenture, made this twelfth day of September, in the year eighteen hundred and seventy-eight, between Bennington F. Randolph, a master in chancery of the State of New Jersey, party of the first part, and Rosewell G. Ralston, of the city of New York, in the county of New York, and State of New York, party of the second part, witnesseth:

Whereas, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and seventy-eight, a certain writ of fieri facias was issued out of the court of chancery of the State of New Jersey, directed and delivered to me, the said Bennington F. Randolph, then and still being a master in chancery of the said State of New Jersey, and which said writ is in the words or to the effect following, that is to say:

NEW JERSEY, *to wit:*

[L. S.] The State of New Jersey to Bennington F. Randolph, esquire, one of the masters of the court of chancery of New Jersey, greeting:

Whereas, on the eleventh day of January, in the year of our Lord one thousand eight hundred and seventy-eight, by a certain decree
196 made in our court of chancery before our chancellor at Trenton, in a certain cause therein depending, wherein Theodore F. Randolph and Benjamin G. Clarke, trustees for the first-mortgage bondholders of the New Jersey West Line Railroad Company, are complainants, and the New Jersey *Weshine* Railroad Company, Charles Hartshorne and Caroline C. Hartshorne, his wife; Catharine A. Beekman, John R. Van Derveer, and William Z. Larned, executrix and executors of Benjamin F. Beekman, deceased; Catharine A. Beekman, John Whitehead, trustee of Clara D. Thornton and Albert G. Thornton; Clara D. Thornton and Albert G. Thornton, her husband; Phœbe Grummon, James Jaggers, Henry H. Jones, John Hays, Mrs. John Hays, his wife; Joseph T. Howland, Denmon N. Beardsley, George H. Smith, Joseph John Potter, Hubert Scoville, The Orange National Bank, Moses H. Acker, Mary Ann Dorell, William Z. Larned, receiver of the New Jersey West Line Railroad Company; The Trustees for the Support of Public Schools, Asa Packer, and Stephen U. Caldwell are defendants, it was ordered, adjudged, and decreed that certain mortgaged premises, land, franchises, and property described in a certain trust-deed or mortgage made by the said New Jersey West Line Railroad Company to the said Theodore F. Randolph and Benjamin G. Clark, trustees aforesaid, bearing date the eleventh day of March, eighteen hundred and seventy, and mentioned and set forth in the bill of complaint in said cause, that is to say, all and singular the railroad of the New Jersey West Line Railroad Company, and all the appurtenances thereto belonging at the date of said mortgage, acquired and to be acquired, constructed and to be constructed, throughout and along the entire main line of said company's railroad from the eastern terminus of said railroad at the city of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the westerly terminus of said railroad at the Pennsylvania State line, including all the lands and real estate then acquired and that have since been acquired by the said company, on

which the said main line of the raid company's railroad is by law authorized to be constructed; also the bridges across the Delaware River
197 and the tracks thereon, and all the tracks, bridges, viaducts, and fences then on and that should be on and belonging to the said main line of said railroad, together with all the franchises, powers, and privilege to own, obtain, construct, operate, manage, and maintain the said main line of railroad possessed by the said company as a corporation, also, the depots, station-houses, engine-houses, car-houses, freight-houses, water-stations, turn-tables, machine and other buildings and structures then on or along and adjacent to said main line of railroad belonging to or that have since been acquired or used by said company on or along said main line of road of said company, together with the land on which the same then were or have since been erected or acquired, or that have since been acquired by said company; and all the machinery, tools, implements, and materials for constructing, operating, repairing, or replacing the said line of railroad, or any part thereof; and the right of way, road-bed, and other grounds then forming and that have since formed part of and then belonging or have since belonged to the said line of railroad, embracing, as to the parcels and items of property thereinbefore in said mortgage specified as conveyed thereby, such and such parts thereof as had been theretofore acquired by, constructed, or placed in the possession of the said company, as also such as have since been acquired by or constructed or placed in the possession of the said company, and which forms or constitutes the said main line of railroad, and lands, buildings, and structures thereto belonging; also all the locomotives, tenders, cars, and other-rolling stock or equipment which, by virtue of the contract for the construction of said main line and equipment thereof, and bridge across the Delaware River, have since been placed on the said railroad, or furnished to or procured by the said company for that purpose; and all the property, franchises, rights, and things, of whatsoever name or nature, held or acquired at the date of said mortgage, or which have since been held or acquired, by the said New Jersey West Line Railroad Company, or its successors, pertaining to the said main line of railroad or the equipment thereof, together with
198 all and singular the tenements, hereditaments, and appurtenances to the said main line of railroad lands and premises, or either thereof, belonging or in anywise appertaining, including all lands, premises, franchises, and property, of whatsoever nature, acquired by said New Jersey West Line Railroad Company subsequently to the execution of the complainant's said trust-deed or mortgage, and pertaining to the main line of railroad of said company, or the equipment thereof, from the eastern terminus of said railroad, in the city of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the western terminus of said road at the Pennsylvania State line, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues, and profits thereof, and of every part and parcel thereof, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said New Jersey West Line Company, and of the said defendants, of, in, and to the same, and to every part and parcel thereof, with the appurtenances, be sold to raise and pay the sums of money mentioned in said decree, with interest, to wit:

First. The sum of four millions four hundred and ten thousand two

hundred and twenty-three dollars and eighty-five cents in gold coin of the United States, due for principal and interest on the bonds secured by a deed of trust or mortgage, bearing date the eleventh day of March, one thousand eight hundred and seventy, duly executed and delivered by the said New Jersey West Line Company to said Theodore F. Randolph and Benjamin G. Clark, trustees, and recorded in the clerk's office of the county of Union, March 15th, A. D. 1870, at 1 o'clock p. m., in book 11 of mortgages for said county, on page 621, &c.; in the clerk's office of the county of Somerset, on the 15th day of March, A. D. eighteen hundred and seventy (at 3.47 p. m.), in book C No. 2 of mortgages for Somerset County, on pages 576, &c.; in the clerk's office of Morris County, March fifteenth, A. D. eighteen hundred and seventy, in book S 2 of mortgages, on pages 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177,
199 178, 179, 180, 181, and 182, and in the register's office of the county of Essex, on the fifteenth day of March, A. D. 1870, at fifty-five minutes after eleven o'clock in the forenoon, in book L 5 of mortgages for Essex County, N. J., on pages 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, and 494, together with the lawful interest thereon to be computed from the first day of November, eighteen hundred and seventy-seven, being the date of master's report until the same be paid and satisfied, and also the costs of the said complainants.

Second. The sum of eleven thousand two hundred and eighty-five dollars and seventeen cents in currency, due to the said defendant, Joseph John Potter, on a certain judgment entered in the supreme court of the State of New Jersey on the seventh day of January, eighteen hundred and seventy-three, for the sum of eight thousand three hundred and ninety-seven dollars and forty-three cents debt and forty dollars and ninety-six cents costs of suit in a certain cause therein pending, wherein the said Joseph John Potter was plaintiff and the said New Jersey West Line Railroad Company was defendant, together with lawful interest thereon from the first day of November, eighteen hundred and seventy-seven, being the date of the master's report until the same be paid and satisfied, and also the costs of the said defendant, Joseph John Potter, and that for that purpose a writ of fieri facias should issue out of this court directed to Bennington F. Randolph, esquire, one of the masters of this court, commanding him to make sale absolutely and in fee simple according to law of the said premises, land, franchises, and property described in the said mortgage and in said decree set forth, and that he should sell the same in the following parcels and order:

First. All the lands, premises, franchises, and real property covered by said mortgage and trust deed in one parcel.

Second. The locomotive and tender "Schuylkill No. 2" and all necessary tools in one parcel.

200 Third. The locomotive and tender "New Providence No. 1," and all necessary tools in one parcel.

Fourth. The nine cars mentioned in said decree, viz, three dirt cars (two small), six flat cars in one parcel.

Fifth. The balance of the personal property, viz, forty tons of iron rails, old; forty tons iron rails, new (amounts estimated); two tons iron spikes, one pair old car wheels, and eleven engine tank springs in one parcel, and that the surplus money arising from such sale, if any there be, should be brought into the said court subject to the further order of the

said court, as by the said decree remaining as of record in our said court of chancery, at Trenton, doth and may more fully appear.

And whereas the costs of the complainant have been duly taxed at eight hundred and twenty-eight dollars and fifty-nine cents, and the costs of the defendant Joseph John Potter have been duly taxed at thirty-nine dollars and thirty-five cents, therefore, you are hereby commanded that you cause to be made of the premises, land, franchises, and property aforesaid by selling the same for the purpose in the parcels and in the order aforesaid, and that out of the moneys arising from such sale you do pay:

First. To the solicitors of the complainants the sum of eight hundred and twenty-eight dollars and fifty-nine cents costs.

Second. To the complainants or their solicitors the said sum of four million four hundred and ten thousand two hundred and twenty-three dollars and eighty-five cents in gold coin of the United States, together with interest thereon from the first day of November, eighteen hundred and seventy-seven.

Third. To the defendant Joseph John Potter, or to his solicitors, the said sum of eleven thousand two hundred and eighty-five dollars and
201 seventeen cents in currency, together with lawful interest thereon from the first day of November, eighteen hundred and seventy-seven, and also the sum of thirty-nine dollars and thirty-five cents of costs, and that you have those moneys before our said chancellor in our court of chancery aforesaid, at Trenton, on the first Tuesday of February next, to render to the said complainants and defendant, and also the surplus money, if any there be, to abide the further order of our said court according to the decree aforesaid, and at said sale you may receive as cash from the purchaser or purchasers, his or their representatives or assigns, bonds and interest coupons of the same secured by said trust deed or mortgage, at such rate pre centum of the par value thereof as will be payable to the holders thereof upon the distribution of the proceeds of the sale, provided, nevertheless, that in any case there shall be paid in actual cash so much of said purchase-money not to exceed twenty thousand dollars as you, the master, shall direct, and you are to make return at the time and place aforesaid, by certificates under your hands of the manner in which you shall have executed this our writ together with this writ.

Witness, Theodore Runyon, esquire, our chancellor at Trenton aforesaid, the twenty-fourth day of January, in the year of our Lord, one thousand eight hundred and seventy-eight.

H. S. LITTLE, *Clerk.*

MUIRHEAD & MCGEE, *Sol'rs.*

As by the record of the said writ of fieri facias in the office of the clerk of the said court of chancery of the State of New Jersey, in book Q, 4 of executions, page 367, &c., may more fully appear.

And whereas I, the said Bennington F. Randolph, as such master as aforesaid, did in due form of law, by public advertisement signed by myself and set up in five or more public places in each of the counties of Essex, Union, Morris, Somerset, and Hunterdon, the counties wherein the real estate belonging to the said New Jersey West Line Railroad Company is situ-
202 ated, one at least of which was set up in each of the townships in said counties in which said real estate is situated at least two months

next before the time appointed for selling the same, and also set up the said advertisements in at least three places in the township of Milburn, in the county of Essex, and in at least three places in the township of Summit, in Union County, and in at least three places in the township of Bernards, Somerset County, these being all the townships in which the chattles mentioned in said fieri facias are situated, at least five days next before the time appointed for selling the same, all of which notices so set up were set up in public places in the State of New Jersey, and also published the said advertisement in the Newark Daily Advertiser, a newspaper printed and published at Newark, in Essex County, the county seat of said county, and in the Orange Journal, also printed and published in said county of Essex; and also in the New Jersey Journal, and the Elizabeth Daily Herald, two of newspapers printed and published in Elizabeth, the county seat of the county of Union, and also in the True Democratic Banner and The Jerseyman, two of the newspapers printed and published in Morristown, the county seat of the county of Morris and also in the Somerset Messenger, and the Somerset Unionist, two of the newspapers printed and published at Somerville, the county seat of the county of Somerset; and also in the Hunterdon County Democrat, a newspaper printed and published at Flemington, in Hunterdon County, the county seat of said Hunterdon County; and in the Clinton Democrat, a newspaper also printed and published in said county of Hunterdon, all of which said newspapers were printed and published in the State of New Jersey, at least four weeks successively, at least once a week next preceding the time so appointed, giving public notice that said property would be exposed to sale at public vendue on Saturday, the twenty-ninth day of June, eighteen hundred and seventy-eight, at two o'clock in the afternoon of that day, at the court-house in the city of Newark, in the county of Essex and State of New Jersey, at which time and place so appointed for the sale, I, by order of the chancel'or, served upon me on
203 said last-mentioned day, directing me to adjourn said sale for four weeks, permitting me to adjourn from week to week, adjourned said sale publicly for the space of one week, to wit, to the sixth day of July, eighteen hundred and seventy-eight, at the same hour and place, and on said day and at said place last-mentioned I did further publicly adjourn the said sale to thirteenth day of July, eighteen hundred and seventy-eightt, at the same hour and place, at which last-mentioned hour and place I did further publicly adjourn said sale to the twentieth day of July, eighteen hundred and seventy-eight, at the same hour and place, at which last-mentioned time and place I did further publicly adjourn said sale to the twenty-seventh day of July, eighteen hundred and seventy-eight, at the same hour and place, at which last-mentioned time and place I did then and there again publicly adjourn said sale to the third day of August, eighteen hundred and seventy-eight, at the same hour and place, at which last-mentioned day, hour, and place I did then and there, openly and publicly, in due form of law, between the hours of twelve and five in the afternoon, expose the property described in said fieri facias as the first parcel for sale at public vendue to the highest bidder, under and by virtue of said writ of fieri facias, whereupon the said party of the second part, by John J. Flanagan, his agent in that behalf, and for that purpose, did then and there bid therefor the sum of fifty thousand ($50,000), and no one bidding any more, or so much therefor, the said property, so as last aforesaid offered for sale, was then and

there struck off and sold to said party of the second part, the highest bidder as aforesaid; I then, within the hours last aforesaid, next offered at public vendue the property described in said fieri facias as the second parcel, and the said party of the second part, by John J. Flanagan, his agent as aforesaid, bidding therefor the sum of five hundred dollars ($500), and no one bidding so much or more for the same, the said second parcel was struck off and sold to the said party of the second part, the highest bidder as aforesaid. I did not offer the property described in said fieri facias as the "third parcel" for sale, for the
204 reason that an order made by the chancellor of the State of New Jersey, on the twenty-fourth day of June, eighteen hundred and seventy-eight, was served on me, directing that the locomotive described as said third parcel, was free from any lien of the complainant's mortgage in the said fieri facias mentioned, and that service of said order upon me making sale as master as aforesaid under said fieri facias be a supersedeas upon the said locomotive described as the "third parcel" as aforesaid. I then, within the hours last aforesaid, next offered at public vendue the property described as afore said as the fourth parcel, and the said party of the second part by John J. Flanagan, his agent as aforesaid, then and there bidding therefor the sum of eighty dollars ($80), and no one bidding so much or more for the same the said fourth parcel was struck off and sold to the said party of the second part as aforesaid, at the price last aforesaid, he being the highest bidder for the same. I then, within the hours last-aforesaid, next offered at public vendue the property described as aforesaid as the fifth parcel, and the said party of the second part, by John J. Flanagan, his agent as aforesaid, then and there bidding therefore the sum of one thousand dollars ($1,000), and no one bidding so much or more for the same the said fifth parcel was struck off and sold to said party of the second part at the price last aforesaid, he being the highest bidder for the same. Afterwards, by a notice in writing, under the hand and seal of the said John J. Flanagan, bearing date the fifteenth day of August, eighteen hundred and seventy-eight, and presented to me, the said John J. Flanagan did declare himself to have been agent of the said party of the second part in making the biddings aforesaid, and did request me to make the deeds and conveyance for said property to the said party of the second part hereto instead of to him the said John J. Flanagan:

Now, therefore, this indenture witnesseth, that I, the said Bennington F. Randolph, as such master as aforesaid, under and by virtue of the said writ of fieri facias, and in execution of the power and trust in me reposed, and in consideration of the sum of fifty-one thousand five hundred
205 and eighty dollars to me in hand paid by the said party of the second part, the receipt whereof I do hereby acknowledge, and therefrom acquit, exonerate, and forever discharge the said party of the second part, his heirs, executors, and administrators, have granted, bargained, sold, assigned, transferred, and conveyed, and by these presents do grant, bargain, sell, assign, transfer, and convey unto the said party of the second part, and to his heirs and assigns, all and singular the said above-described property, with the appurtenances, privileges, and heridetaments thereunto belonging or in anywise appertaining: To have and to hold the same unto the said party of the second part, his heirs and assigns, to his and their only proper use, benefit, and behoof forever, in as full, ample, and benefi-

cial a manner as by virtue of the said writ fieri facias I may, can, or ought to convey the same.

In witness whereof, I, the said Bennington F. Randolph, as such master as aforesaid, have hereunto set my hand and seal this twelfth day of September, in the year of our Lord eighteen hundred and seventy-eight.

BENNINGTON F. RANDOLPH, [L. S.]
Master in Chancery.

Signed, sealed and delivered in the presence of—

LINSLY ROWE, of New Jersey.

STATE OF NEW JERSEY,
Hudson County, ss:

I, Bennington F. Randolph, a master in chancery of the State of New Jersey, do solemnly swear that the property described in the within deed, made by me to Rosewell G. Ralston, was by me sold to , by virtue of a good and subsisting execution, as is herein recited; that the moneys ordered to be made have not been to my knowledge or belief paid or satisfied; that the time and place of the sale of said property was by
206 me duly advertised as required by law, and that the same was cried off and sold to a bona fide purchaser for the best price that could be obtained.

BENNINGTON F. RANDOLPH.

Sworn before me, one of the masters in chancery of the State of New Jersey, on this twelfth day of September, A. D. 1878; and I, having examined the deed above mentioned, do approve of the same, and order it to be recorded as a good and sufficient conveyance of the property therein described.

LINSLY ROWE, *M. C. C.*

STATE OF NEW JERSEY,
Hudson County, ss:

On this twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-eight, before me, the subscriber, a master in chancery of said State, personally appeared Bennington F. Randolph, a master in chancery of the State of New Jersey aforesaid, who is, I am satisfied, the grantor in the within indenture named; and I having first made known to him the contents thereof, he did thereupon acknowledge that *the* signed, sealed, and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

LINSLY ROWE, *M. C. C.*

Received and recorded Sept. 16, 1878.

WM. McCARTY, *Clerk.*

STATE OF NEW JERSEY,
County of Morris, ss:

I, Melvin S. Condit, clerk of the county of Morris, do hereby certify that the foregoing is a true copy of the record a deed given by Bennington F. Randolph, master, &c., to Rosewell G. Ralston, as fully as

207 the same remains in my office in book Z 9 of deeds for said county, on pages 424, &c.

In testimony whereof I have hereunto set my hand and affixed the seal of said county at Morristown, this twenty-seventh day of December, A. D. eighteen hundred and seventy-eight.

[L. S.] MELVIN S. CONDIT, *Clerk.*

EXHIBIT B, 11.

First mortgage and trust deed.—New Jersey West Line Railroad Company to Theodore F. Randolph and Benjamin G. Clarke, trustees.

This indenture, made the eleventh day of March, in the year of our Lord one thousand eight hundred and seventy, between the New Jersey West Line Railroad Company, a corporation in the State of New Jersey, in the United States of America, party of the first part, and Theodore F. Randolph and Benjamin G. Clarke, of said State, party of the second part: Whereas, pursuant to the power and authority in it vested, the party of the first part has resolved to enable it to construct its railroad and equip the same, to make and issue a series of three thousand of its bonds, each of one thousand dollars, numbered respectively from one to three thousand, inclusive, to amount in the aggregate to three million dollars, which bonds are to have coupons or warrants thereto annexed for the payment of interest thereon, at the rate of seven per cent. per annum, which said bonds are to be all equally secured, principal and interest, by these pres-
208 ents, which is a deed of trust or first mortgage, which bonds are of like tenor and date, each bearing even date herewith, payable, principal and interest, in gold coin of the United States of America, and in form following:

$1,000.] (No. .) [$1,000.

STATE OF NEW JERSEY.

New Jersey West Line Railroad Company.

UNITED STATES OF AMERICA.

Principal and interest payable in gold coin of the United States of America.

Know all men by these presents that the New Jersey West Line Railroad Company, a corporation by a charter of the State of New Jersey, is indebted to Theodore F. Randolph and Benjamin G. Clarke, or the bearer hereof, in the sum of one thousand dollars in gold coin of the United States of America, which the said company promises to pay to said Theodore F. Randolph and Benjamin G. Clarke, or the bearer hereof, on the first day of May, in the year one thousand nine hundred, at the city of New York, with interest thereon at the rate of seven per cent. per annum, payable semi-annually in gold coin of the United States of America, at the city of New York, on the first day of May and November in each year, upon presentation and surrender of the coupons hereto annexed as they severally become due, and in case of any non-payment of any half-yearly

installment of interest which shall have become payable, and the coupon therefor shall have been presented and the amount thereof demanded, and the continuance of such default for the period of three months after such presentment of coupon and demand, the principal of this bond shall become due in the manner and with the effect provided in the deed of trust or mortgage securing the same. This bond is one of a series of three thousand bonds, each for one thousand dollars, of like tenor and date, numbered from 1 to 3,000, inclusive, amounting in the aggregate to three million dollars, the payment of each and all of which bonds is secured equally by a deed of trust or first mortgage, bearing date the eleventh day of March, one thousand eight hundred and seventy, duly executed and
209 delivered by the said railroad company to said Theodore F. Randolph and Benjamin G. Clarke, trustees, covering the railway of said company and all the appurtenances thereto belonging, together with the franchises, powers, and privileges possessed by said company by law as a corporation, also the rolling stock and equipment in the said deed of trust or mortgage mentioned.

This bond shall pass by delivery, or it may be registered by its owner in the books of the company, at the office of said company. After a registration of ownership certified thereon by the transfer agent of the company, no transfer of this bond shall be valid except upon the books of the company, unless the last transfer shall have been to bearer and transferability by delivery thereby restored; but this bond shall continue subject to successive registrations and transfers to bearer as aforesaid at the option of the holder.

This bond shall not become obligatory until it shall have been authenticated by a certificate endorsed hereon, and signed by the trustees named above, or the survivor of them, or their successors as such trustees.

In witness whereof the said company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of the president and secretary, and has also caused the coupons hereto annexed to be signed by its treasurer, this eleventh day of March, in the year one thousand eight hundred and seventy.

[SEAL.]

, *Sec'y.* , *Pres't.*

[Form of coupon or interest warrant.]

New Jersey West Line Railroad Company.

STATE OF NEW JERSEY, UNITED STATES OF AMERICA.

Warrant for thirty-five dollars for six months' interest due on first-mortgage bond, No. , of the New Jersey West Line Railroad Company, for $1,000. This interest is payable in gold coin in New York City, on the day of .

$35.] , *Treas.*

210 Now, therefore, this indenture witnesseth that, for and in consideration of the premises and of the sum of one dollar to it duly paid by the party of the second part, the receipt whereof is hereby acknowl-

edged by the party of the first part, and in order to secure the payment of the principal and interest of the said bonds, according to the tenor thereof, and of the coupons or interest warrants thereto annexed, the party hereto of the first part hath granted, bargained, sold, assigned, transferred, conveyed, and confirmed, and by these presents doth grant, bargain, sell, assign, transfer, convey, and confirm unto the party of the second part, as joint tenants and not as tenants in common, and unto the survivor of them and their successors and assigns, all and singular the railroad of the New Jersey West Line Railroad Company, the party of the first part hereto, and all the appurtenances thereto belonging, acquired and to be acquired, constructed and to be constructed, throughout and along the entire main line of said company's railroad from the eastern terminus of said railroad at the city of Newark, in the State of New Jersey, westerly across the said State of New Jersey to the western terminus of said railroad at the Pennsylvania State line, including all the lands and real estate acquired and that shall be acquired by the said company, on which the said main line of the said company's railroad is by law authorized to be constructed; also the bridge across the Delaware River and the tracks thereon, and all the tracks bridges, viaducts, and fences on and that shall be on and belonging to said main line of said railroad, together with all the franchises, powers, and privileges, to own, obtain, construct, operate, manage, and maintain the said main line of railroad possessed by the said company as a corporation; also the depots, station-houses, engine-houses, car-houses, freight-houses, water-stations, turn-tables, machine and other buildings and structures on or along and adjacent to said main line of railroad, belonging to or that shall be acquired by said company, or that shall be used on or along said main line of railroad of said company, together with the land on which the same are or shall be erected, acquired, or that shall be acquired
211 by said company; and all the machinery, tools, implements, and materials for constructing, operating, repairing, or replacing the said line of railroad or any part thereof; and the rights of way, road-bed, and other grounds forming and to form part of and belonging or to belong to the said line of railroad, embracing as to the parcels and items of property hereinbefore specified as conveyed hereby such and such parts thereof as have been heretofore acquired by, constructed, or placed in the possession of the said company; as also such as shall be hereafter acquired by or constructed or placed in the possession of the said company, and which forms and constitutes, or shall form and constitute, the said main line of railroad and lands, buildings, and structures thereto belonging; also all the locomotives, tenders, cars, and other rolling stock or equipment which by virtue of the contract for the construction of said main line of railroad and equipment thereof, and bridge across the Delaware River, shall be placed on the said railroad, or furnished to, or procured, or that shall be procured by the said company for that purpose; and all the property, franchises, rights, and things of whatsoever name or nature now held or acquired, or which shall hereafter be held or acquired by the party of the first part hereto, or its successors, pertaining to the said main line of railroad or the equipment thereof, together with all and singular the tenements, hereditaments, and appurtenances to the said main line of railroad, lands, and premises, or either thereof, belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues,

rents, issues, and profits thereof, and of every part and parcel thereof; and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the party of the first part hereto, of, in, and to the same and every part and parcel thereof with the appurtenances:

To have and to hold the above mentioned and described railroad, bridges, real estate, property, and premises with the appurtenances unto the party of the second part, as joint tenants and not as tenants in common, and to
212 the survivor of them and their successors and assigns as joint tenants and not as tenants in common, as aforesaid, to the only proper use, benefit, and behoof of the party of the second part, and the survivor of them, and their successors and assigns as joint tenants and not as tenants in common, as aforesaid, forever, in trust nevertheless for the purposes herein expressed, to wit:

ARTICLE FIRST.—Until default shall be made by the party of the first part, its successors or assigns, in the payment in gold coin, as aforesaid, of the principal or interest, or some part thereof, of the said bonds, or some one of them, when due, and the coupon or coupons for interest shall have been presented and the amount thereof demanded, and the continuance of such default for the period of three months after such presentment of the coupon or coupons and demand, the party of the first part, its successors and assigns, shall be suffered and permitted to possess, manage, operate, and enjoy the said railroad, with its equipment and appurtenances, and also the bridges, real estate, lands, and premises, property, and franchises hereinbefore described and hereby mortgaged, and to receive, take, and use the tolls, incomes, revenues, rents, issues, and profits thereof, and of every part and parcel thereof, in the same manner and with the same effect as if this mortgage had not been made.

ARTICLE SECOND.—In case default or failure shall be made or occur in the payment in gold coin, as aforesaid, of any interest on any of the said bonds according to the tenor thereof, or of the coupons thereto annexed, or any or either of them, when the same shall become due, and the coupon or coupons for such interest shall have been presented and the amount thereof demanded, and such default or failure shall continue for the period of three months after such presentment of the coupon or coupons aforesaid and demand, or in case of default or failure in the payment in gold coin, as aforesaid, of the principal or any part thereof of said bonds, or any of them, when the same shall become due and be presented for payment, and such default or failure shall continue for the period of three months,
213 then and in either of such cases it shall be lawful for the said trustees, Theodore F. Randolph and Benjamin G. Clarke, or the survivor of them or their successors, personally or by their or his attorney or agents, the said default or failure then still existing, upon the written request of the holder or holders of one hundred and fifty bonds issued by said company, and secured by and under this mortgage and deed of trust, on which by the non-payment of interest or principal such default or failure shall continue to exist, or on their or his own motion to enter into and upon and take possession of all and singular the railroad, bridges, real estate, lands, property, and premises, rolling stock, and equipment hereby conveyed and mortgaged or intended to be, and of each and every part thereof without any let or hindrance of or from the party of the first part,

or its successors, and to have, hold, possess, occupy, use, employ, and enjoy the same, and to operate by their or his superintendents, managers, receivers, or servants, or other attorneys or agents, the said railroad and rolling stock and equipment thereof hereby mortgaged, and conduct the business thereof, and to make from time to time all repairs and replacements thereof, and of any part thereof, and of the bridges and other property connected therewith, and such useful alterations, additions, and improvements thereof and thereto as may seem to them or him in their or his discretion judicious, and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the said railroad, bridges, real estate, lands, property, and premises, rolling stock, and equipment, and of every part and parcel thereof, and after deducting the expenses of operating the same and conducting the business thereof, and of repairs and replacements, alterations, additions, and improvements, and all the expenses incurred in the holding and management of the same, and of every part and parcel thereof, and all payments which may be made for advances of any money or moneys, or for taxes or assessments upon the said premises, or any part or parcel thereof, or against the said company or against said trustees as such, as well as just compensation for their or his services as trustees or trustee, and for the
214 services and reasonable charges as such attorneys and counsel as may have been by them or him employed, and any and all costs which may have been incurred, to apply the moneys arising as aforesaid to the payment of interest on the said bonds, the interest on which shall be past due in the order in which such interest shall have become due, rateably to the persons holding the coupons evidencing the right to such interest; and after paying all interest which shall have become due to apply the said moneys to the payment of the principal of such of said bonds secured hereby as may then be due and unpaid, rateably and without discrimination or preference; and if, after satisfaction of said interest and principal, a surplus shall remain, to pay over such surplus to the company, its successors or assigns, or as any court of competent jurisdiction shall order.

ARTICLE THIRD.—In case default be made as aforesaid, and shall continue for the period of six months after the presentment of any coupon or coupons aforesaid past due, and demand of the payment of the interest on any of said bonds mentioned in said coupon or coupons, or in case such default be in the payment of the principal secured by any of said bonds or any part thereof, and shall continue for the period of six months after such principal shall become due, then, in either case, it shall likewise be lawful for the said trustees, or the survivor of them, or their successors, after entry as aforesaid, or other entry, or without entry, personally or by their or his attorney or attorneys, agent or agents, to sell and dispose of all and singular the railroad, bridges, real estate, lands, property, and premises, rolling stock and equipment, franchises, rights, and powers hereby conveyed or intended so to be, at public auction in the city of Newark, in the county of Essex, in the State of New Jersey, or in Jersey City, in the county of Hudson, in said State of New Jersey, as the said trustees or the survivor of them or their successors shall designate, and at such time as they or he may appoint, having, after the expiration of said period of six months, first given notice of the place and time of such sale by advertisement published not less than three times a week for two months in one or

more newspapers published in the city of New York, and also in two or more newspapers published in New Jersey, and in whatever way and wherever else required by law; and to adjourn the said sale from time to time as often as in their or his discretion may be for the best interest and advantage of the holders of bonds and coupons or interest warrants secured thereby; and if there be an adjournment or adjournments, to make the sale aforesaid without further notice by advertisement, unless notice of adjournment by advertisement should be required by law, then such notice to be as required by law, the said sale to be in case of adjournment at the time and place to which any adjournment of the same may be made; and to make and deliver to the purchaser or purchasers of the said property and premises good and sufficient deed or deeds in the law in fee simple, conveying thereby the whole of said main line of railroad, bridges, real estate, lands, property, and premises, with the said franchises, rights, and powers of said corporation, and the said rolling stock and equipment, and all the appurtenances to the said property, or any part thereof belonging; which sale and conveyance made as aforesaid shall be a perpetual bar both in law and equity against the party of the first part, its successors and assigns, and all other persons claiming or to claim the said railroad, bridges, real estate, lands, property, and premises, franchises, rights, and powers, rolling stock and equipment, or any part or parcel thereof, by, from, through, or under the said party of the first part, its successors or assigns, which said sale and conveyance shall vest the right, title, estate, interest, property, and possession of, in, and to the said premises, franchises, and equipment wholly and absolutely in the purchaser or purchasers; and after deducting from the proceeds of such sale just allowances for all expenses thereof, and for attorneys and counsel fees, and for costs, taxes, assessments and for all other expenses, advances, or liabilities which may have been made or incurred by the said trustees or either of them, or advances made for the benefit of the trust in respect to the said railroad, bridges, real estate, lands, property, and premises, rolling stock and equipment, or any part or parcel thereof, or in respect to
216 the business of the trust hereby created, or in operating or maintaining the said railroad or bridges or equipment, or any part of either, or anything appertaining thereto, or in managing the business thereof, or in taking charge or control of the said property and business, or any part thereof, and in arranging for and completing the sale aforesaid, and all the payments which may have been made by the said trustees or the survivor of them or their successors or either of them, in the execution of the trust and in the discharge of their or his duty as trustees or trustee, as well as compensation for their or his own services, to apply the said proceeds to the payment of the principal of such of the said bonds as may be at that time unpaid, whether or not the same shall have previously become due, and of the interest which shall at that time have accrued on the said principal and be unpaid, without discrimination or preference, but rateably to the aggregate amount of such unpaid principal and accrued and unpaid interest, but always so that if *of* any of the coupons or interest warrants then past due annexed to all of said bonds which came due at the same date, a part only shall then have been paid in part or in full, then the others of said coupons or interest warrants which came due at the same date with those thus paid in part or in full, which shall not then have

been paid in part or in full, shall be first paid to an amount which will make the payments of the interest on all the said bonds secured by this mortgage or deed of trust, to be in full of interest to the same date, in order and to the intent that the security for and payment of all the said bonds shall be perfectly equal, without any preference in favor of one or the other either as to principal or interest; and if, after the payment of the principal and interest of said bonds in full, a surplus shall remain, to pay over such surplus to the said company or render the same and account therefor and pay the same or so much thereof as may be required to the person or persons who may be entitled thereto under or by virtue of any second mortgage that may be given by the party hereto of the first part or its successors on or covering the estate, property, franchises,
217 and rights covered by this mortgage or deed of trust, which second mortgage or deed of trust, if so given, is to be distinct from, subject to, and second in the order of priority to this mortgage or deed of trust, the right to give, make, and execute a valid second mortgage or deed of trust, which shall be a lien subsequent to this mortgage or deed of trust, on all the said main line of railroad, bridges, real estate, lands, and premises, rolling stock, equipment, franchises, and other property and rights embraced in this mortgage or deed of trust is hereby reserved, but only so that it shall be operative on any remainder or equity of redemption or surplus, after the complete execution of the trust hereby created and the payment in full by the said company or its successors, or by a sale and conveyance in fee-simple, by the said trustees or the survivor of them or their successors as aforesaid, or by other means, of the principal and interest secured by this mortgage and deed of trust; and balance of said surplus over what may be required to pay any second mortgage, to be paid to the said company; or the said surplus shall be rendered and accounted for by the said trustees or the survivor of them or their successors as any court of competent jurisdiction shall order or decree, it being expressly understood that in no case shall any advantage be taken of any valuation, appraisement, or stay or extension laws by the party of the first part or its successors, nor of any injunction or stay of proceedings, or any process to be applied for by the party of the first part or its successors, to prevent the entry, possession, or use of said main line of railroad and premises and property, as provided in article second of this instrument, or to prevent such entry and sale as aforesaid; and that such second mortgage or deed of trust, if given or made hereafter, shall in no way interfere with or abridge the full and complete effect and operation of this mortgage or deed of trust, or the rights and security of the holders of bonds and of coupons or interest warrants thereto annexed secured by this instrument; and that in case of a sale and conveyance by said trustees or the survivor of them or their successors, by virtue of and pursuant to this mortgage or deed of trust, the purchaser or purchasers, by virtue of such sale and con-
218 veyance, shall take the said main line of railroad, real estate, lands, property, premises, franchises, and rights conveyed by this mortgage or deed of trust, free and clear of any claim or lien under or by virtue of any second mortgage or deed of trust that may be made as aforesaid, but such second mortgage or deed of trust shall operate on and be a claim against and lien upon the said surplus.

And it is hereby declared and agreed that the receipt of the said trustees

or of such one or more of them as shall make such sale and conveyance, for the purchase-money or for securities therefor, whether mentioned in said conveyance or such receipt be separate, shall be a sufficient discharge to the purchaser or purchasers of the estate, property, and premises, franchises and rights, which shall be sold and conveyed as aforesaid, for his or their purchase-money, and that such purchaser or purchasers, his or their executors or administrators, or any claiming under him or them, shall not, after the payment of said purchase-money and having such receipt therefor, whether expressed in the conveyance to such purchaser or purchasers or in a separate writing, be liable or under obligation to see to the application of such purchase-money or any part or portion thereof, to, upon, or for the trusts or purposes of these presents, or any or either of them, or be in any manner whatever answerable for any loss, misapplication, or non-application or misuse of such purchase-money, or any part or portion thereof, or be obliged to inquire into, or be affected by any question as to the necessity, expediency, or authority of or for such sale.

ARTICLE FOURTH.—In case default shall be made in the payment of any half year's interest on any of the said bonds, at the time and in the manner in the coupon issued therewith provided, the said coupon having been presented for payment and the payment of the interest therein specified having been demanded, and that such default shall continue for the space or period of three months after the interest expressed in said coupon shall have become due, and from and after the coupon shall have
219 been presented and the payment thereof demanded as aforesaid, then and thereupon the principal of all the said bonds, shall at the election of the trustees, become immediately due and payable.

ARTICLE FIFTH.—The said trustees or the suvivor of them or their successors shall also in their or his discretion, have full power to convey or release, upon the written request of the party of the first part, any lands acquired or held for the purposes of stations, depots, shops, bridges, or for other purposes than as part of the width of land authorized by law for said main line of railroad, occupied or to be occupied by the track from the city of Newark to the Pennsylvana State line, which lands, not part of that occupied by or intended for the track, in their or his judgment shall not be necessary for use in connection with the said railroad, or any lands not occupied by the track which may become disused by reason of the change of location of any station or station-house, depot, shop, bridge, or other building or structure connected with the said railroad or any part thereof, and any lands not occupied by the track adjacent to such station, or station-house, depot, shop, bridge, or other building or structure, which the company may deem it expedient to *discuss* or abandon by reason of such change and to consent to any such change or any other changes in the location of the track, depots, buildings or other structures, or any or either of them, which in their or his judgment shall have become expedient or necessary to increase the facilities of said main line of railroad as a through railroad from the city of Newark to the Pennsylvania State line, and to made and deliver the instruments necessary or proper to carry the same into effect, and said conveyance or release shall operate to release said land mentioned therein from this mortgage or deed of trust as a lien, but they are not to convey or release, under or by virtue of this article, any part of the permanent main line of railroad through from the city of Newark to the Pennsylvania State line or the land for the width authorized by law and necessary for

the track. Any lands which may have been acquired for perma-
220 nent use in substitution for any so released shall be conveyed to the trustees upon the trusts of these presents; and the trustees shall also have full power to allow the said company from time to time, to dispose of according to its discretion, such portions of the equipment, machinery, and implements at any time held or acquired for the use of the said railroad as may have been unfit for such use, replacing the same by new or other, which shall be conveyed by the said company to the trustees and made subject to the lien and operation and held upon the trusts of these presents.

ARTICLE SIXTH.—It is hereby provided always nevertheless, and it is the true intent and meaning of these presents, that if the party of the first part shall well and truly pay or cause to be paid the principal of the said bonds when the same shall become due, in coin as aforesaid, and interest thereon when the same shall have become payable, and the coupon or coupons therefor shall have been presented and payment thereof demanded according to the tenor of said bonds, and of the coupons or interest warrants thereto annexed, and according to the true intent and meaning of said bonds and said coupons or interest warrants thereto annexed, and of these presents, said interest to be paid in gold coin, then, and in that case, upon the payment of the principal and all the interest aforesaid, the estate, right, title, and interest of the said parties of the second part, trustees as aforesaid, the survivor of them and their successors, in the trusts hereby created, and these presents, as well as the said bonds and coupons, or interest warrants issued therewith, shall cease, determine, and become null and void, anything herein to the contrary notwithstanding; otherwise the same shall be and remain in full force and virtue.

ARTICLE SEVENTH.—It is mutually agreed by and between the parties hereto that the word "trustees," as used in these presents, shall be construed to mean the trustees or trustee for the time being, whether original or new,
and whenever a vacancy shall exist, to mean the surviving or con-
221 tinuing trustee; and such trustee shall, during such vacancy, be competent to exercise all the powers by these presents granted to or conferred upon the parties hereto of the second part. And it is mutually agreed by and between the parties hereto that neither of the said trustees or their successors, or either of them, shall be in any manner responsible for any default or misconduct of any other of them; that the said trustees, and each of them, and their successors, and each of them, shall be entitled to just compensation for all services which they, or either of them, may hereafter render in their or his trust, and to the repayment to them of all expenses incurred by them, including counsel and attorney's fees paid by them in connection with the trust hereby created, the same to be paid by the company or out of the income of the property, and for that purpose they or he may at any time apply to the courts, or any of them, without notice to any person except to the party hereto of the first part, its successors, or assigns; that either of said trustees or any successor may discharge himself of the trust created by these presents by notice in writing to the said company and to the existing trustee, if there be such, three months before such resignation shall take effect, or such shorter time as may be accepted, by written consent, as adequate notice, and upon the due execution of the conveyances hereinafter required.

That in case at any time hereafter either of the said trustees, or any trustees or trustee hereafter appointed, shall die or resign or become incapable or unfit to act in the said trust, a successor or successors to such trustee or trustees shall be appointed by the surviving or continuing trustee, with the consent of the company and the trustee or trustees so appointed, with the trustee surviving or continuing, shall thereupon become vested with all and singular the powers, authorities, and estates granted to or conferred upon the parties of the second part as trustees by these presents, and all the rights and interests requisite to enable them or him to execute the purposes of this trust, without any further assurance or conveyance so far as such effect may be lawful, but the surviving or continuing trustee shall immediately execute all such conveyances and other instruments as may be fit or expedient for the pur-
222 pose of assuring the legal estate in the premises jointly with himself, to the trustee so appointed; and upon the death, resignation, or removal by any court of competent jurisdiction of any trustee, or an appointment of another in his place, all the powers and authorities of the one so dying, resigning, or removed by virtue hereof shall cease, and all the estate, right, title, and interest in the said property, premises, franchises, and powers of any trustee so dying, resigning, or removed shall, if there be a cotrustee surviving or continuing in office, wholly cease and determine, but the said trustee so resigning or removed shall, on the written request of the new trustee who may be appointed, immediately execute a deed or deeds of conveyance to vest in such new trustee jointly with the continuing trustee, and upon the trusts herein expressed all the property, rights, and franchises which may be at that time held upon the said trusts; provided nevertheless, and it is hereby declared and agreed, that in case it shall at any time hereafter prove impracticable, after reasonable exertions, to appoint, in the manner hereinbefore provided, a successor in any vacancy which may have happened in said trust, application in behalf of all the holders of the bonds secured hereby may be made by the surviving or continuing trustee, or if the trust be wholly vacant by holders of bonds secured hereby, or any of them, on giving notice in writing to the company, or in default of such application by any bondholder or bondholders, then by the said company making application to the court of chancery of the State of New Jersey, or to any court of competent jurisdiction, for the appointment of a new trustee or trustees, and in case of application as aforesaid by the said company, such notice of the time and place for the appointment of a new trustee or new trustees shall be given by publication thereof in such newspapers published in the city of New York and in the State of New Jersey and for such length of time as the court shall direct.

And the party of the first part for itself, its successors and assigns, in consideration of the premises, and of one dollar to it duly paid, the receipt whereof is hereby acknowledged, hereby covenants and agrees
223 to and with the party hereto of the second part, and the survivor of them and their successors and assigns, that whenever and as often as the party of the first part, its successors or assigns, shall hereafter acquire any lands for use as part of the width allowed by law to be held and owned by said company for said main line of railroad, or to be used for bridges, depots, station-houses, or other buildings, or any equipment, or any other property or things of whatever name or nature for use as part of said main line of railroad, or for bridges, depots, station-houses,

or other buildings adjoining thereto, or any rights or privileges of the company which shall result from any addition or chartered rights of the company in the ownership or management of the said main line of railroad, the said party of the first part, its successors and assigns, shall and will acquire, possess, and hold the same and every part and parcel thereof, and also all the said main line of railroad of the party of the first part, and the bridges, buildings, houses, and other structures and rolling stock and equipment connected with the said main line of railroad, and forming part thereof, contracted for, constructed, or that may be contracted for by, constructed for, or furnished to, the company, upon and subject to the trusts of this indenture, but this deed of trust or mortgage is not to cover or affect and does not include any branch railroad that may be built to connect with said main line of railroad, or any lands temporarily held by said company not a part of the width allowed by law for the said main line of railroad and not required for bridges, depots, buildings, and other structures contiguous to said main line of railroad.

And the said party of the first part for itself, its successors, and assigns, in consideration of the premises and of one dollar to it duly paid by the said party of the second part, the receipt whereof is hereby acknowledged, hereby covenants and agrees to and with the party of the second part, and the survivor of them and their successors and assigns, that the said company and its successors and assigns shall and will, from time to time, and at all times hereafter, and as often as thereunto requested by the trustees under this indenture, execute, deliver, and acknowledge all such
224 further deeds, conveyances, and assurances in the law for the better assuring unto the parties of the second part, the survivor of them and their successors as trustees or trustee, upon the trust herein expressed, the said main line of railroad and the said real estate, lands, bridges, houses, and other structures, rolling stock, equipment, franchises, propperty, and things which are hereinbefore referred to as conveyed by this deed of trust or mortgage, or which the company may hereafter for any reason become entitled to or may acquire for, or for the use of, said main line of railroad or the bridges or buildings adjacent thereto, and also all franchises and corporate rights which may hereafter be acquired by the said party of the first part, its successors or assigns, to facilitate the ownership, use, or management of said main line of railroad with the appurtenances, as by the said trustees or their counsel learned in the law shall be reasonably advised, devised, or required, but always so that if no further or other deeds, conveyances, or assurances should be made, yet that the said property of every kind so as aforesaid a part of said main line of railroad, or lands for bridges, buildings, or structures adjoining the same, including the franchises, shall as well all thereof now acquired as that shall hereafter be acquired by the party hereto of the first part, its successors and assigns, be held, acquired, received, and possessed by the party hereto of the first part, its successors and assigns, by virtue of this deed of trust or mortgage, subject to the trusts in and by this instrument created, and subject to the estate, right, and interest of said trustees and the survivor of them and their successors, in and to the said property of every kind and franchises now acquired or that shall hereafter be acquired by the said company, its successors and assigns, hereinbefore referred to as embraced in and intended to be covered by this instrument.

And it is mutually agreed between the parties hereto, and the said trusts are accepted and created with the distinct understanding, that the party hereto of the second part, and the survivor of them and their successors in said trusts, shall be accountable, liable, or responsible for reasonable care and diligence only in the performance of the trusts hereby created, and in the management of the said estate and property, in like manner as a bailee without reward, and that they shall not nor shall either of them be under obligation by virtue of anything herein to do any act or require it to be done which shall require an advance, or outlay, or expenditure of money or funds, until the money or funds necessary to be advanced, laid out, or expended, shall be furnished or paid to them or the survivor of them or their successors, which money or funds so paid or furnished to them necessary to be advanced, laid out, or expended in the business or duties connected with said trusts, shall be deemed part of the expenses to be paid to the person or persons who may have advanced the same out of monies which by virtue of said trusts shall come to the hands of said trustees or the survivor of them or their successors; and it is mutually understood and agreed between the parties hereto, and the trusts aforesaid are hereby created and the appointment of trustees accepted with the further distinct understanding, that the party hereto of the second part, the survivor of them and their successors, shall not nor shall either of them be accountable, liable, or responsible for the act or acts of any attorney, agent, depositary, employee, or of any other person or persons whatever employed by them or him, or for any act which shall be done pursuant to the advice of counsel, or done and performed in good faith, when such attorney, agent, depositary, employee, counsel, or any other person or persons employed by them or him shall have been selected with reasonable discretion.

In witness whereof the said party of the first part, the New Jersey West Line Railroad Company, has caused its corporate seal to be hereto affixed and the same to be attested by the signature of John H. Lyon, its president, who is duly authorized to do so by a resolution of said corporation, and the same is also attested by Beverley C. Sanders, the company's secretary.

And the said Theodore F. Randolph and Benjamin G. Clarke, the party of the second part, have hereto set their hands and seals to evidence their acceptance of the trust hereby created, the day and year first above written.

[SEAL.] JOHN H. LYON, *President.*

Attest:

BEVERLEY C. SANDERS, *Secretary.*

THEO. F. RANDOLPH, [L. S.]
B. G. CLARKE, [L. S.]
Trustees.

Sealed and delivered in the presence of, who also witnessed the affixing United States internal revenue stamps to the amount of $3,000, which were cancelled—

WILL J. LYON.

STATE OF NEW JERSEY,
Hudson County, ss:

Will J. Lyon, of full age, of Jersey City, Hudson County, New Jer-

sey, being duly sworn according to law, on his oath says, that he is well acquainted with the common seal of the New Jersey West Line Railroad Company, the grantor named in the foregoing indenture; that the seal affixed thereto, attested by the signatures of the president and secretary of said company, is the common seal of said company; that this deponent was present at the execution of said indenture on the day of the date thereof, by the grantor at Jersey City, Hudson County, New Jersey, and saw John H. Lyon, who is the president of said company, as such president seal said indenture by affixing the said common seal thereto, and sign, seal, and deliver the said deed of trust and mortgage as the voluntary act and deed of the said company; and this deponent saw the secretary aforesaid, Beverly C. Sanders, attest said seal and sign his name to said indenture; and they respectively first stated that the said company knew and were informed of the contents thereof, and the contents of the same
227 were made known to them in the presence of this deponent prior to the execution thereof, and this deponent thereupon signed his name as the subscribing witness to such execution thereof; and this deponent further says that he also saw Theodore F. Randolph and Benjamin G. Clarke, the party of the second part to the foregoing indenture of mortgage and deed of trust, the contents thereof having first been made known to them, sign, seal, and deliver the same as their voluntary act and deed, and this deponent signed his name as the subscribing witness to such execution by them; and this deponent also saw $3,000 (three thousand dollars) in value of United States internal revenue stamps affixed to the said indenture and duly cancelled at the same time of the execution of said indenture.

WILL J. LYON.

Sworn and subscribed before me at Jersey City, Hudson County, New Jersey, March 11, 1870.

BENNINGTON F. RANDOLPH,
Master in Chancery of New Jersey.

No. 6913.

Received in the clerk's office of the county of Union, March fifteenth, A. D. 1870, at 1 o'clock p. m., and recorded in book eleven of mortgages for said county, on pages 521, &c.

HENRY R. CARMON, *Clerk.*

Received in the clerk's office of the county of Somerset, on the fifteenth day of March, A. D. eighteen hundred and seventy, at 3.47 p. m., and recorded in book C, No. 2, of mortgages for Somerset County, on page 576, &c., &c.

WILLIAM ROSS, JR., *Clerk.*

228 Received in the Morris County clerk's office, March fifteenth, A. D. eighteen hundred and seventy, and recorded at length in book S 2 of mortgages, on pages 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, and 182.

[Compared.]

RICHARD SPEER, *Clk.*

Received in the register's office on the fifteenth day of March, A. D. 1870, at fifty-five minutes after eleven o'clock in the forenoon, and recorded in book L 5 of mortgages for Essex County, N. J., on pages 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494.

JULIUS STAPFF, *Reg.*

229 Circuit court of U. S.

THOMAS H. MORRISON ET AL.
vs.
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et al. } On demurrer to bill, &c.

By NIXON, *District Judge:*

The demurrer in this case admits to be true certain facts, which the bill of complaint alleges substantially, as follows: that on the 29th of March, 1865, the legislature of the State of New Jersey passed an act chartering the Passaic Valley & Peapack Railroad Company, authorizing said company to lay out and construct a railroad from some point in the county of Union or the county of Essex, & passing through the township of Springfield, in the county of Union, into the township of New Providence, & up the Passaic Valley, at or near Baskingridge, in the township of Bernards, in the county of Somerset, & so on to the
230 village of Peapack, in the township of Bedminester, in the said county of Somerset; that the incorporation therein named subsequently opened books & received subscriptions for the stock, & that the subscribers organized themselves into an incorporation by electing a board of directors; that the said corporation caused to be surveyed and located the route of said railroad, commencing at a point in the county of Union, & running up the valley of the Passaic, & thro' the township of Bernards; that on the 9th of April, 1868, the legislature of said State passed an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, & Union to issue bonds and take stock in the Passaic Valley & Peapack Railroad Company; that pursuant to the last-recited act twelve or more freeholders of the township of Bernards, in the county of Somerset, made application to the circuit court of said county for the appointment of three freeholders, residents of the said township, to
231 carry into effect the purposes & provisions of the said act, & that John H. Anderson, Oliver R. Stelle, & John Guerin were duly appointed; that said commissioners entered into a bond to the said township, with approved sureties, for the faithful discharge of their duties, which bond was deposited with the clerk of the township; that the commissioners, in the month of December, 1868, filed in the clerk's office of the county of Somerset three paper writings, annexed to each other, purporting to be signed by divers tax-payers of the township of Bernards, to which were attached affidavits verifying the same, & certifying that the persons so signing were a majority of the tax-payers of the township & represented a majority of the landed property appearing upon the last assessment roll of said township, for the year 1867, and that the purport of said paper writings so signed and filed was that the persons signing the same thereby consented that the said commissioners might, under

232 the provisions of the law, borrow on the faith & credit of the township & execute bonds for $130,000, which money was to be invested in the stock of the Passaic Valley & Peapack Railroad Company, & that the commissioners might exercise full and complete powers for the township to carry into effect the purposes & provisions of the said act; that a certified copy of said consent, under the hand and seal of the county clerk, was afterwards filed with the clerk of the township of Bernards; that on the 1st of September, 1869, the said commissioners caused to be filed in the office of the clerk of the county of Somerset three other paper writings, of the same tenor & effect as those last mentioned, except that the amount of bonds to be issued was limited to $127,000, the same being certified & authenticated as aforesaid, & a copy thereof duly filed with the clerk of said township; that afterwards, & before January 1, 1870, the said commissioners, acting in pursuance of authority of the said
233 consent papers, subscribed for 2,540 shares of the par value of 50 dollars each of the the capital stock of the said railroad company, the same to be paid for in instalments as called for by the directors, the par value of which amounted to $127,000, which sum did not exceed ten per cent. of the value of the real estate of said township as it appeared upon the assessment roll for 1867; & that about the 1st of January, 1869, they caused to be prepared divers bonds, of the denominations of $1,000, $500, & $100 each, respectively, & amounting in the aggregate to the sum of $127,000, with semi-annual interest coupons annexed thereto, at 7 per cent., & providing for the payment of the principal at various dates, ranging from six years to twenty-five years, & not longer from date, & that the form of each of said bonds was as follows:

No. .] UNITED STATES OF AMERICA. [$.

TOWNSHIP OF BERNARDS, SOMERSET COUNTY, STATE OF NEW JERSEY.

The Inhabitants of the Township of Bernards, in the county of
234 Somerset, acknowledge themselves to owe to bearer five hundred dollars, which sum they promise to pay to the holder hereof, at the American Exchange National Bank in the city of New York, twenty-three years after the date hereof, & interest thereon at the rate of 7 per cent. per annum, payable semi-annually on the first days of July and January in each year until the principal sum shall be paid, on presentation of the annexed interest coupons at the said bank.

This bond is one of a series of like tenor, amounting in the whole to the sum of one hundred & twenty-seven thousand dollars, issued on the faith & credit of the said township in pursuance of an act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex, & Union to issue bonds & take stock in the Passaic Valley & Peapack Railroad Company," approved April 9, 1868.

(On right margin:) Five hundred dollars.
(On left margin:) Five hundred dollars.

In testimony whereof the undersigned, commissioners of the said
235 township of Bernards, in the county of Somerset, to carry into effect the purposes & provisions of the said act, duly appointed,

commissioned, & sworn, have hereunto set our hands & seals the first day of January, 1869.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners.

Registered in the county clerk's office.

WILLIAM ROSS, JR.,
County Clerk.

Coupons annexed.

$17.50.

The Inhabitants of the Township of Bernards, in the county of Somerset, will pay to bearer, at the American Exchange Nat. Bank in the city of New York, seventeen $\frac{50}{100}$ on the first day of January, 1889, for six months, interest on bond No.

JOHN H. ANDERSON,
OLIVER R. STELLE, &
JOHN GUERIN,
Comm'rs.

That each of said bonds was duly registered in the office of the clerk of the county of Somerset, & was signed by & in the proper hand-
236 writing of the said commissioners; that they were negotiated and disposed of by the said commissioners in open market, & for money paid by various persons therefor, and with the proceeds thereof the commissioners paid to the said railroad company $127,000 for the subscription of the township for 2,540 shares of the capital stock of said company; that afterwards, in the year 1870, a certificate of 2,540 shares of the said stock was duly issued to the Inhabitants of the Township of Bernards, & was delivered to the said commissioners, who have ever since held it & voted on the same at all meetings of the stockholders & enjoyed all the benefits of ownership; that the said railroad company during the years 1869 & 1870, caused to be built & put in operation a railroad leading from a point on the line of the Morris & Essex Railroad near Summit, in the county of Union, & extending into the township of Bernards, in the county of Somerset, entering the same at a point about two & one,
237 half miles in a southeasterly direction from the village of Basking-ridge and passing thro' the last-mentioned village to the village of Bernardsville, in said county, a distance of about five miles in said county, the said road having a switch connexion with the Morris & Essex Railroad at the point near Summit, and that for the past three years regular passenger & freight trains have been run over the Passaic Valley & Peapack Railroad daily from and to the said village of Bernardsville to Summit, and thence over the Morris & Essex Railroad thro' Newark to the city of New York; and that the inhabitants of the township of Bernards have derived great benefit therefrom, the taxable property having been increased thereby at least twenty per cent.; that the said railroad company, after completing the road from Bernardsville to the point near Summit, proceeded with the

work of grading & excavating for a continuation thereof to the city
238 of Newark, and expended a large sum of money thereon, & nearly completed the grading for about six miles from Summit to the city of Newark, when the work stopped in consequence of the financial revolution of 1873; that about the 15th of February, 1870, the legislature of New Jersey changed the name of the Passaic Valley & Peapack Railroad Company to the "New Jersey West Line Railroad Company," without any change, nevertheless, of corporate rights, powers, and privileges; and that about 1872 one Asa Packer and others, who were largely interested in the Lehigh Valley Railroad Company, became desirous of procuring a charter to construct a railroad across New Jersey from the Delaware River to New York in order to form a continuation of the Lehigh Valley road across said State, & with that view obtained control of the majority of the stock of said Passaic Valley & Peapack or New Jersey West Line Railroad Company, voted themselves into the office, & assumed the control
239 thereof; that the aforesaid commissioners assisted the said Packer & his associates in their project, & voted according to their wishes at all meetings of stockholders on an agreement with him & his associates that he & they should take from the township its stock in the said railroad & pay off the bonds issued by them, or indemnify the township against their payment; that early in 1873 one Benjamin F. Beekman, a wealthy capitalist, became desirous of obtaining the control for himself & others associated with him of the capital stock & direction of the said railroad, & for that purpose applied to said Anderson, Stelle, & Guerin for their influence and votes in stockholders' meetings in that behalf, & thereupon an agreement and understanding in writing, under seal, was entered into by said Beekman with the township of Bernards, by which Beekman agreed to undertake, for a good & valuable consideration, to indemnify & save harmless the said township against the payment of the prin-
240 cipal & arrears of int. & coupons due & to grow due on all of said bonds, and delivered the same to the commissioners, & that said agreement furnished complete indemnity to the township against the said bonds, and in effect assumes their payment; that afterwards and during the year 1873 the commissioners sold to Beekman 88 shares of the capital stock of said railroad of the par value of $4,400, & received in payment therefor an equal amount of the bonds so issued by them at their par value; that said Beekman made an effort to complete said railroad from Summit to Newark & failed, & that in February, 1875, he departed this life, having first made & published his last will & testament, whereby he appointed Catherine A. Beekman, I. Reeve Vanderveer, & William D. Larned executors thereof, by whom the said will was afterwards proved as well in New York as in New Jersey, & letters of probate were duly issued thereon by the surrogate of the county of Union
241 to said executors; that the complainants, previous to the 5th day of May, 1874, became, by purchase in open market for their then market price, which they then & there paid, & were, & still are, the lawful owners & holders of divers of the said bonds so issued by the said commissioners of the tenor & effect herein before set forth, amounting to $28,100; that each of said bonds was duly registered & issued by the said commissioners for value paid in open market as aforesaid, & that the complainants are the true & actual holders of the same;

that the township of Bernards neglecting to pay the interest coupons due on said bonds since January 1, 1871, the complainants (jointly with Thomas A. Morrison, now deceased), on the 5th of May, 1874, commenced an action at law in a plea of debt in this court against the township to recover the arrears of interest; that a declaration was duly filed therein, to which the township demurred; & said demurrer being overruled the said town-
242 ship thereupon, by leave of the court, filed a plea, setting up as a defence to said suit that the several bonds held by the complainants were not sealed by the said commissioners, & were not the deed of the township; & complainants admit that on inspecting the said bonds, altho' each of them, in the attestation clause thereof, declares that it has been sealed by the said commissioners, & each of them is signed in the proper handwriting of the commissioners, it appears, in point of fact, that no seals are found thereon; that they had been taken & held by complainants without knowledge that any such defect existed; that the omission to seal said bonds was a mere mistake on the part of said commissioners; that the said bonds were issued by the commissioners in pursuance of the power & authority in them for that purpose reposed, & in good faith; that the township of Bernards had received the full benefit & consideration there-
243 for contemplated by law, & that the failure to affix seals thereto was an oversight & accidental omission contrary to the intention & understanding of the parties to said bonds; that it is inequitable & contrary to good conscience for the township to set up such a defence, & that the complainants, as bona fide holders & bearers of the same for a valuable consideration paid, are entitled in equity to have said several bonds held, treated, & considered to be as valid & effectual in law as if the same had been actually sealed by said commissioners before being issued, & are entitled to have the same reformed by actually affixing thereto, at this time the seals of said commissioners.

The bill then prays that the said bonds so held by the complainants may be reformed as aforesaid, & that the inhabitants of the township of Bernards, & the said Oliver R. Stelle & John Guerin, or one or some of them, may be decreed & directed by the court to affix to said bonds
244 opposite the signatures of John H. Anderson, Oliver R. Stelle, & John Guerin their seals or scrolls, or other devices in the nature of & equivalent in law to seals, & that it may be declared & decreed by this court that the said bonds shall at all times & in all places & for all purposes be held, deemed, & taken to be valid & effectual in law in all respects the same & to the same extent as if the same had been actually sealed by the said commissioners before the issuing the same, & that the said The Inhabitants of the Township of Bernards may be perpetually enjoined & restrained by the decree of this court from setting up, alleging, or pretending as a defence in said suit at law so brought by the complainants in this court, or in any other suit at any other time hereafter to be brought by complainants in any court to recover the principal or interest or any part thereof due or to grow due on said bonds, that the said bonds or
245 any of them were not actually sealed by said commissioners before being issued by them, or that said bonds are not the deed of the said township.

The counsel for the executors of Benj. F. Beekman, dec., on the argument insisted—

1. That the bill should be dismissed as to them, because they were not proper parties to the suit.

No relief is prayed for against them. It is to be inferred from the allegations of the bill of complaint that the only reason why they are made parties is because the estate of Beekman is interested in the result, & hence ought to have the opportunity to set up a defence against a decree which if favorable to the complainants may be used hereafter to fix a liability upon the testator's estate. These allegations are, in substance, that Beekman, in the year 1873, being desirous of getting the direction & management of the Passaic Valley & Peapack Railroad corporation, &
246 to this end to wield the influence which resulted from the control of the stock held by the township of Bernards, agreed with the commissioners, for a valuable consideration, to indemnify & save harmless the township from the payment of any of the bonds issued by them & the interest coupons due & to grow due thereon. It is not claimed that the complainants were in any wise party or privy to the agreement; but the obvious suggestion is, that a court of equity would be loath to make a decree touching the validity of the bonds, or correcting any mistake in the mode of their issue, without opening the doors of the litigation to all parties to be affected by the decree.

Recognizing the fundamental principle of equity practice, that all persons should be before the court, either as plaintiffs or defendants, whose interests may be affected by the proposed decree, or whose concurrence may be necessary to a complete arrangement, why should the representatives of Beekman's estate complain or demur because the bill alleges
247 that they have some concern with the subject-matter of the controversy, & affords them the chance of either disclaiming or defending?

The 54th rule of practice in the courts of equity of the United States makes ample provision for such a case. It says that where no account, payment, conveyance, or other direct relief is sought against a party to a suit, not being an infant, the party upon service of the subpœna need not appear & answer the bill, unless the plaintiff specially requires him so to do, but he may appear & answer at his option; and if he does not appear and answer he shall be bound by all the proceedings in the cause. If the plaintiff shall require him to appear & answer he shall be entitled to the costs of all the proceedings against him, unless the court shall otherwise direct.

These defendants may exercise their judgment whether they will answer or not. There is no constraint upon them; no decree can
248 be entered against them upon the merits or for costs.

The same question in principle was considered by the late Chancellor Zabriskie in the case of Dorsheimer vs. Rorback, 8 C. E. G., 46.

There the sureties in an administration bond were joined with the representatives of a deceased administrator in an action by one of the next of kin for a distributive share of the estate. It was held on demurrer that no relief could be had in such a proceeding against the sureties; but, nevertheless, that they were proper, although not necessary, parties to the suit. In assigning his reasons why he considered them proper parties the learned chancellor said: "They are interested in the result; they may be called upon by suit at law for the amount which may be recovered in t suit

against the representatives of their principal. They will be bound by the decree made in this suit as to the amount due to the complainant,
249 and it is proper that they should have a right to defend so as to prevent any collusion between the complainant & the principal, & to protect themselves from any neglect of the principal to make proper defence. The demurrer, therefore, being general, must be overruled, as these defendants are proper parties, although no decree for the payment of the share by them can be made in it."

Such reasoning is applicable to the present case, & the above ground of demurrer is not sustained.

2. Turning to the merits of the case, other grounds of demurrer were ably argued by the counsel of the demurring defendants, all of which may be briefly comprehended in one proposition, to wit, that the bill does not disclose a case where a court of equity, acting within the ordinary limits of its jurisdiction in matters of this kind, has the power to grant the relief prayed for.

250 The demurrer admits the allegation of the bill of complaint, that the township of Bernards, acting under the authority of the legislature of the State & through its duly authorized commissioners as its agents, subscribed for 2,540 shares of the capital stock of the Passaic Valley & Peapack Railroad Company, & issued their bonds for $127,000, purporting to be under the hands & seals of the commissioners, which were sold in open market for a valuable consideration to various purchasers, and that the money realized on the sale was appropriated to the payment of the said subscription, and that this inadvertence & oversight, the actual affixing to the bonds of the seal of the commissioners, was overlooked & omitted.

The complainants claim that upon this statement of facts they are entitled to the aid of the court, in the exercise of its equity powers, to restrain the township from setting up the legal defence of the want
251 of seals to any suit brought or to be brought at law for the payment of the bonds or the interest coupons; and, as ancillary to this, to have the decree of the court for the reformation of the bonds held by the complainants by the affixing of seals as the parties thereto understood and intended.

Courts of equity, in a great variety of cases, are accustomed to act as ancillary to the administration of justice in other courts. They will prevent a party from setting up an inequitable or unconscientious defence at law, or from interposing impediments to the just right of the other party. (2 Sto. Eq., § 903.)

There are exceptions to the rule; as, for instance, they will not interfere where the parties stand on equal equities, nor will they take away a legal defence in a case of contract or instrument not founded on a valuable consideration.

252 They will also supply any defect in the execution of a power, whether the mistake arises from mistake, accident, or ignorance. Wherever the intention to execute a power is manifest, but the execution is defective, or it has not been executed according to the terms or in the form prescribed, they will correct the mistake or supply the defect in favor of parties for whom the person intrusted with the execution of the power is under a moral or legal obligation to provide by its execution.

But in all cases of relief of this sort the party asking for it must stand upon some equity superior to that of the party against whom he asks it. The court is silent & passive where the equities are equal. And the relief is ordinarily limited to the defective execution of a power created by the party, & does not include the defective execution of a power created by law. (1 Sto. Eq., § 96, § 177; 1 Sto. R., 487, Bright vs. Boyd.)

253 Applying these familiar principles of equity jurisdiction to the subject matter under consideration, does the case presented fall within the ordinary rule, or the exceptions?

The complainants came as purchasers, and not as volunteers. They have paid a valuable consideration for certain evidences of indebtedness, and when they demand the money due thereon according to the contract intended & understood by both parties they are met with the refusal to pay on the ground that the agents of the obligors, in the execution of the bonds, did not make a legal instrument by formally annexing their seals. It is acknowledged to have been an oversight or mistake.

Does the power exist in this court to restrain a defence so manifestly inequitable & to correct the mistake by amending the instrument?

254 1. The counsel for the demurrants says that it does not, because the power to issue the bonds was created by statute, and if it has been defectively executed the bonds are void, and there is no remedy, as equity only aids the defective execution of a power created by the parties.

It is conceded that municipal corporations are possessed of limited powers. They exist only in the atmosphere of the jurisdiction & by virtue of the law which gives them being, & can only do what the law authorizes in express terms or by necessary implication. But the authority of the township to issue the bonds is not derived from the act of the legislature, which is more properly a regulation of the conditions & mode by which the act is to be performed. The authority is found in the written consent of a majority of the tax-payers of the township as ascertained according to the mode prescribed. It is this consent which creates

255 the power or authority, & that is the act of one of the parties. The consent being given, the commissioners are not trustees executing a power, but mere agents of the corporation, clothed with the performance of special duties, among which are the signing & sealing of the bonds for the township. These bonds were the contract between the parties. They were defectively executed; one of the parties has received value for them, & the court is asked to see to it that such party shall not now take advantage of its own mistake, whereby the other party which paid the consideration loses the promised security.

This view of the case is strengthened by the further consideration that if the law of the legislature had been entirely silent in regard to the issue of the bonds the right to issue them would have existed as the lawful result of the power to subscribe for the stock of the railroad com-

256 pany. If the law had vested in the township the naked authority to make a subscription of $127,000 for the stock, absolutely or conditionally, it would have followed as incidental to such express grant that when the subscription was completed according to the act the township, without further legislation, might issue bonds, borrow money, or impose taxes for its payment. Such was the doctrine of the Supreme Court in the case of Seybert vs. The City of Pittsburgh (1 Wall, 272), affirming

the decision of the supreme court of Pennsylvania in Reinbolts vs. The Common Council (41 Penn., 278), and also in Rogers vs. Burlington, Id., 654.

The demurrer cannot be sustained on this ground.

2. But it is further suggested by the counsel for the demurrants that the acceptance of these bonds without seals was negligence of so gross a character on the part of the complainants that a court of equity ought not to give its aid in correcting the mistake.

257 But is this a case where the principle of negligence can be invoked? Observe, the demurrer does not deny, but admits, the allegations of the bill, that the defendant' township has taken the money of the complainants for its bonds, and now declines to pay, not because value has not been received, but because its agents casually omitted to affix their seals in their execution. It is not pretended that there was no intent or understanding that the seals should be affixed, and where the intention is manifest it is only the ordinary exercise of equity jurisdiction to relieve against mistakes in agreements. (Wiser vs. Blatchley, 1 John. Ch. 607.) In this case Ch. Kent enforced a bond given by a surety for the guardian of an infant, which the surrogate had taken in the name of the people, altho' the statute expressly required that it should be taken in the name of the infant. See also Langley vs. Brown, 2 Ait., 203;

258 Joynes vs. Statham, 3 Id., 388, & Henkle vs. Insurance Co., 1 Ves. Sen., 318; Cockrill vs. Cholmly, 1 Russ. & Mylne, 424), where the master of the rolls admits that courts of equity will supply a defect in the execution of a power which consists in the want of some circumstance required in the manner of execution, as the want of a seal or of a sufficient number of witnesses, or where it has been executed by will instead of a deed.

Mr. Justice Washington, in delivering the opinion of the Supreme Court in the long-contested case of Hunt vs. Rousmanaire's adm'r, makes some observations on the subject of equity jurisdiction so pertinent to the case under consideration that we cannot forbear quoting them:

"There are," he says, "certain principles of equity applicable to this question," i. e., how far the courts may substitute new methods to give effect to contracts which the parties had made, & which had failed,

259 "which, as general principles, we hold to be incontrovertible.

"The first is that where an instrument is drawn & executed which professes or is intended to carry into execution an agreement, whether in writing or by parol, previously entered into, but which, by mistake of the draughtsman, either as to fact or law, does not fulfill, or which violates the manifest intention of the parties to the agreement, equity will correct the mistake so as to produce a conformity of the instrument to the agreement.

"The reason is obvious. The execution of agreements fairly & legally entered into is one of the peculiar branches of equity jurisdiction, and if the instrument which is intended to execute the agreement be, from any cause, insufficient for that purpose, the agreement remains as much unexecuted as if one of the parties had refused altogether to comply with his engagement; and a court of equity will, in the exercise of its

260 jurisdiction, afford relief in the one case as well as in the other by compelling the delinquent party fully to perform his agreement

according to the terms of it & to the manifest intentions of the parties. So, if the mistake exist not in the instrument which is intended to give effect to the agreement, but in the agreement itself, & is clearly proved to have been the result of ignorance of some material fact, a court of equity will, in general, grant relief, according to the nature of the particular case in which it is sought."

The demurrer in the case is overruled, & the same order will be made in the case of Cyrus Curtiss vs. The Inhabitants of the Township of Bernards, in which the same question arises and the same reasoning is applicable.

261 A true copy.

[SEAL.]

S. D. OLIPHANT, *Clerk.*
P'r H.

(Indorsed:) U. S. circuit court. Thomas H. Morrison et al. vs. The Inhabitants of the Township of Bernards et al. Opinion. Filed May 2, 1877. S. D. Oliphant, clerk.

262 United States circuit court, district of New Jersey.

THOMAS H. MORRISON ET AL.
vs.
THE INHABITANTS OF THE TOWNSHIP OF BERNARDS et al.

By NIXON, *District Judge:*

The bill was filed in this case by the plaintiffs, in a suit pending on the law side of the court, to correct an alleged mistake, or to enjoin the defendants in that action against setting up an inequitable defence.

It appears that the corporation defendant, in attempting to issue & put upon the market certain township bonds, neglected to have seals affixed to the names of the three commissioners designated by the law to act for the corporation, altho' the act of the legislature of the State authorizing and prescribing the conditions and methods of their issue required that they should be signed and sealed by the commissioners. It is not de-

263 nied that the omission of the seals was simply an oversight or mistake.

To the declaration filed in the cause the defendants have pleaded inter alia; that the several bonds on which the action was brought were not sealed by the commissioners & were not the deed of the township.

Such a plea is a good defence at law, & unless a court of equity has power either to correct the mistake or restrain the defence the holders of the bonds have no remedy for their collection.

It is clear from the evidence that the complainants are bona fide holders without notice of any of the other alleged defects, which might be a defence to a holder with notice.

At the time the bonds were issued all parties interested in their issue intended they should be sealed with the seals of the commissioners acting for & in behalf of the township. Why should not such an omission be supplied? No equity on the part of the defendants is perceived which

should restrain the court from correcting the mistake or from en-
264 joining the defendant from setting up the lack of seals as a defence to the action at law.

The questions involved on the hearing in this case were practically settled by the court when the demurrer to the bill of complaint was argued, & reference is made to the opinion of the court on overruling the demurrer for the grounds in which a decree in favor of the complainant is now ordered.

As the whole object of filing the bill was to prevent the defendant corporation from setting up, under the plea of non est factum, that the bonds are not sealed, the result may be attained either by directing the surviving commissioners to affix the seals thereto or by enjoining the said defendant from making the specific defense of want of seals. The latter course gives sufficient relief; & let a decree be entered declaring that the said several bonds shall at all times & in all places & for all purposes be held & taken to be valid & effectual in law to the same extent as if the
265 same had been in fact signed by the said commissioners before issuing the same, & that the defendant corporation may be enjoined from pleading and alledging as a defense in the suit of law pending in this court, or in any other suit, that the bonds were not actually sealed by the commissioners before being issued by them, or that the said bonds are not the deed of the township of Bernards because no seals have been affixed to the names of the commissioners.

A true copy.

[SEAL.] S. D. OLIPHANT, *Clerk.*

(Indorsed:) United States circuit court, New Jersey. Thomas Morrison et al. vs. The Inhabitants of the Township of Bernards et al. Opinion. Filed Sept. 23, 1879. S. D. Oliphant, clerk. $1.33.

(Also indorsed:) Supreme Court U. S. 1881, October term. No. 97. The Inhabitants of the Township of Bernards, county of Somerset, State of New Jersey, appellants, vs. Thomas H. Morrison and Gardner S. Hutchinson, survivors of Thomas A. Morrison. Stipulation of counsel and addition to record. Filed 10 January, 1882.

(Indorsement on cover:) No. 97. The Inhabitants of the Township of Bernards, in the county of Somerset and State of New Jersey, appellants, vs. Thomas H. Morrison and Gardner S. Hutchinson, survivors of Thomas A. Morrison. New Jersey C. C. U. S. Filed October 11, 1880.

109-341

OFFICE SUPREME COURT U. S.
FILED
NOV 2 1883
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

NOS. 96 AND 97.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY, APPELLANTS,

vs.

GEORGE N. STEBBINS, EXECUTOR OF CYRUS CURTIS DECEASED.

THE SAME,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS OF THOMAS A. MORRISON.

Brief for Appellants.

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265 same had been in fact signed by the said commissioners before issuing the same, & that the defendant corporation may be enjoined from pleading and alledging as a defense in the suit of law pending in this court, or in any other suit, that the bonds were not actually sealed by the commissioners before being issued by them, or that the said bonds are not the deed of the township of Bernards because no seals have been affixed to the names of the commissioners.

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THE SAME,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS OF THOMAS A. MORRISON.

Brief for Appellants.

UNITED STATES SUPREME COURT.

THE INHABITANTS of the TOWNSHIP OF BERNARDS in the COUNTY OF SOMERSET and STATE OF NEW JERSEY, Appellants,

and

GEORGE N. STEBBINS, Executor of CYRUS CURTIS, dec'd., Appellee.

Statement of Facts and Brief for Appellants.

THE SAME

v

THOS. H. MORRISON and GARDNER S. HUTCHINSON, Survivors of THOMAS A. MORRISON.

Statement of Facts and Brief for Appellants.

The following statement of facts apply to the first named appeal:

The bill is filed to restrain the Township of Bernards from setting up as a defense in a court of law *want of seals* to certain alleged bonds purporting to have been issued by certain Commissioners of the Township of Bernards.

The Appellee on the day of April, 1874, brought an action in the Circuit Court for New Jersey to recover arrears of interest claimed to be due upon such bonds. The Appellant there demurred, the demurrer was overruled and a plea of *non est factum* filed to the declaration, setting up as a defense to the action at law that the said several bonds were not sealed by said Commissioners.

Thereupon this bill was filed asking for a decree directing the two surviving Commissioners to affix seals or scrolls opposite the

signatures of such Commissioners and that the several bonds shall be as valid and effectual in law as if sealed before the issuing thereof.

By an act of the Legislature of the State of New Jersey entitled "An act to charter the Passaic Valley and Peapack Rail Road Company," approved March 29, 1865, authority was obtained for such a corporation to construct a railroad which should run into the Township of Bernards, in the County of Somerset and so on to Peapack in said county.

By a supplement to that act approved February 7, 1867, an extension of that route was authorized to some point in Hunterdon County, New Jersey.

April 9, 1868, an act of the Legislature entitled "An act to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union, to issue Bonds and take stock in the Passaic Valley and Peapack Railroad Company," was passed and approved. It was as follows:

AN ACT

TO AUTHORIZE CERTAIN TOWNS IN THE COUNTIES OF SOMERSET, MORRIS, ESSEX AND UNION, TO ISSUE BONDS AND TAKE STOCK IN THE PASSAIC VALLEY AND PEAPACK RAILROAD COMPANY.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That on the application in writing of twelve or more freeholders, residents of any township in either of the Counties of Somerset, Morris, Essex or Union, situate along the route of said railroad, it shall be the duty of the Circuit Court of the county wherein such township is situated, within ten days after receiving such application, to appoint under his hand and seal, not more than three freeholders, residents of such township, to be commissioners for such township to carry into effect the purposes and provisions of this act, who shall hold their offices respectively for the term of five years and until others shall be appointed.

2. *And be it enacted*, That it shall be lawful for said commissioners *to borrow*, on the faith and credit of their respective townships, *such sum of money not exceeding ten per centum of the valu-*

ation of the real estate and landed property of such townships, to be ascertained by the assessment rolls thereof respectively, for the year eighteen hundred and sixty-seven, for a term not exceeding twenty-five years, at a rate of interest not exceeding seven per centum per annum, payable semi-annually, and *to execute bonds therefor*, under their *hands and seals respectively*, the bonds so to be executed may be in such sums, and payable at such times and places, as the said commissioners and their successors may deem expedient; but *no such debt shall be contracted*, or *bonds issued* by said commissioners, of or for either of said townships, until the *written consent* shall have been obtained of the *majority of the taxpayers of such township*, or *their legal representatives, appearing upon the last assessment roll*, and shall *represent a majority of the landed property of such township* (*including lands owned by non-residents*) appearing upon the last assessment roll of such township; such consent shall state the amount of money authorized to be raised in such township, and that the same is to be invested in the stock of the said railroad company, and the signatures shall be proved by one or more of the commissioners; the fact that the persons signing such consent are a majority of the taxpayers of such township, and represent a majority of the real property of such township, shall be proved by the affidavit of the assessor of such township, endorsed upon or annexed to such written consent, and the assessor of such township is hereby required to perform such service; such consent and affidavit shall be filed in the office of the clerk of the county in which such township is situated, and a certified copy thereof in the town clerk's office of such township, and the same or a certified copy thereof shall be evidence of the facts therein contained, and received as evidence in any court in this State, and before any judge or justice thereof.

3. *And be it enacted*, That the said commissioners authorized by *this act may, in their discretion, dispose of such bonds or any part thereof*, to such persons or corporations and upon such terms as they shall deem most advantageous for their said township, but *not for less than par*, and the *money* that shall *be raised* by any *loan* or *sale of bonds* shall be *invested in the stock of said railroad* company for the purpose of building the aforesaid railroad, and said *money* shall be applied and *used* in the construction of said *railroad*, its *buildings*, equipment and necessary appurtenances,

and *for no other purpose*, the commissioners respectively in the corporate name of each of their said townships, shall subscribe for and purchase stock in said railroad company, to the amount they may have severally borrowed as aforesaid, and by virtue of such subscription or purchase of stock, upon receiving certificates for the amount of said stock so subscribed for or purchased by them, the said townships shall acquire all the rights and privileges respectively of other stockholders of said company, and it shall be lawful for the commissioners provided for in this act, or either of them with the consent of the others, or a majority of the said commissioners to participate in and to act in all the regular and legally authorized meetings of the stockholders, and either of them may act as directors of said company if he shall be duly elected as such.

4. *And be it enacted*, That the said commissioners respectively authorized by this act shall report to the township committees of their respective townships at their regular annual meeting in each year the amount required to pay principal or the interest, if any, on the said bonds authorized to be issued under and by virtue of this act, due or to become due and payable during the next ensuing year; the dividends arising from the stock so subscribed for or purchased by said township in pursuance of this act, or so much thereof as may be necessary, shall be received by said commissioners and by them applied to the payment of the interest which shall from time to time accrue upon the bonds authorized by this act, and in case such dividends shall not be found sufficient in any one or more years to pay the principal and interest accruing on said bonds, due and to become due as aforesaid, it shall be and hereby is made the duty of the said township committee, and they are hereby authorized and required to cause to be assessed and levied and collected of the *real estate and landed property* of said townships respectively, at the same time and in the same manner as other taxes are assessed, levied and collected, such sum or sums of money as shall have been reported to said township committee by the said commissioners, authorized by this act to be necessary to make good such deficiency in the payment of the said principal and interest on the said bonds; and the same when collected shall be paid to said commissioners respectively and by them applied to the principal and interest on said bonds,

or so much thereof as shall remain unpaid after the application of said dividends to that purpose.

5. *And be it enacted*, That it shall be lawful for such railroad company to agree with the said commissioners respectively, in behalf of their respective townships, to pay the semi-annual interest accruing on the bonds issued by such townships for the term of three years, or until said railroad shall be completed and in operation and earning sufficient to pay dividends equal to the interest from time to time accruing on said bonds.

6. *And be it enacted*, That the said commissioners appointed under and by virtue of this act may at any time after acquiring such capital stock exchange the same in whole or in part for the bonds issued under the authority of this act, and in such case they shall cancel the bonds so received by them, or they may dispose of such stock in their discretion to any purchaser or purchasers *for cash*, but shall not sell or dispose of such stock at *less than par except* at public sale, of which twenty days notice shall be given in two newspapers published in their respective counties, but no such sale shall be made except by consent obtained to the extent and in the manner provided in the second section of this act, and in case of sale of said stock, either at public or private sale, the proceeds thereof shall be applied by said commissioners respectively to the purchase or redemption of the bonds authorized to be issued by this act and for no other purpose whatever.

7. *And be it enacted*, That at the expiration of twenty-five years after the passage of this act it shall be and hereby is made the duty of the said board of assessors and they are hereby authorized, unless the payment of the said bond is otherwise provided for, to cause to be assessed and levied and collected on the real and landed estate of each of said townships, at the time and in the manner as other taxes are assessed, levied and collected, the sum due on said bonds so issued in pursuance of this act, together with the interest on said principal sum or so much thereof as may remain unpaid by reason of the deficiency of the dividends and sale of said stock; the amount so to be raised under the authority of the said township committees for the payment of the principal or interest shall be determined by the report of the said commissioners respectively, to the said township committee as hereinbefore authorized by this act.

8. *And be it enacted*, That the said commissioners shall also provide within five years from the time of issuing said bonds for the annual payment of at least five per cent. of the same, so as to insure the final liquidation of said bonds within twenty-five years after their date, and for that purpose they shall receive and apply annually the surplus dividends on the stock held by said townships over the amount necessary to pay the semi-annual interest on said bonds, and if the amount of such surplus dividends is not sufficient for the annual payment of said five per cent., and the said commissioners shall not have received sufficient from the sale of stock as herein provided to pay the same, then the deficiency shall be reported by the said commissioners to the township committee to be levied and raised annually in the manner herein provided for paying the interest on said bonds.

9. *And be it enacted*, That before the said commissioners, or either of them, shall enter upon the discharge of their duties under this act, they shall jointly and severally, with two or more sureties, execute to their respective townships, by their respective corporate names, a bond in the penal sum equal to the amounts to be issued to said townships under and by virtue of this act, conditioned for the faithful discharge of their duties as commissioners under this act, and for the just and honest application by them of all moneys, stocks, or bonds issued by them or coming into their hands, according to the true intent and meaning of this act, the sufficiency of such sureties shall be determined by the township committee of such townships respectively, or by the Judge of the Circuit Court of the county in which such township is situated, to be endorsed on said bonds, said bonds shall immediately thereafter be deposited with the clerk of each of said townships to be safely kept under the direction and control of the township committee to be collected by them or their successors in office, for the use and benefit of said township in case the said commissioners, or either of them, are guilty of such a breach of duty or malfeasance in office as to render said bond collectable.

10. *And be it enacted*, That in case a vacancy shall happen by reason of death, removal from said township, resignation or refusal to serve, or otherwise, of either of said commissioners provided for in this act, the vacancy shall be filled by the remaining commissioners of the township in which the vacancy so exists, by ap-

pointment, in writing, to be deposited with the township clerk of said township; each and every person so appointed shall, before he enters upon the discharge of his duties, execute and deliver to the said township, in like manner, a bond in like amount with like conditions and securities as hereinbefore provided, and all provisions of this act shall apply to the successors of the commissioners provided for in this act, whose powers and duties and liabilities shall be the same as those of the commissioners first appointed under this act.

11. *And be it enacted*, That each of the said commissioners shall receive the sum of two dollars per day for each day actually engaged in the discharge of his duties under this act, and his necessary disbursements to be audited and paid by the township committee the same as other township expenses.

12. *And be it enacted*, That the commissioners in each of said townships shall constitute a board to act for their said townships respectively, and a majority of said commissioners in each of said boards shall constitute a quorum to do any business authorized by this act.

13. *And be it enacted*, That on the expiration of the term of office of either of the commissioners provided for in this act, or of their successors, his place shall be filled in the manner provided in the first section of this act, and the commissioners so appointed, as well as those to be appointed under the tenth section of this act, shall be residents and freeholders of the township for which they are to act as such commissioners.

14. *And be it enacted*, That all bonds issued in accordance with the provisions of this act shall be registered in the office of the county clerk of the county in which the township is situated issuing the same, and the words "registered in the county clerk's office," shall be printed or written across the face of each bond, attested by the signature of the county clerk when so registered, and no bond shall be valid unless so registered.

15. *And be it enacted*, That this act shall be a public act, and shall take effect immediately.

Approved April 9th, 1868.

April 9, 1868, a supplement to the act entitled "An act to charter the Passaic Valley and Peapack Rail Road Company,"

was passed by the Legislature permitting the location of the road to be altered.

March 16, 1869, the Legislature of New Jersey passed an act entitled "A Supplement to an act entitled 'An act to charter the Passaic Valley and Peapack Rail Road Company,' approved March 29, 1865, and its several supplements approved February 7, 1867, and April 9, 1868."

The first section enacts as follows: "That the said the Passaic Valley and Peapack Rail Road Company shall have the power and is hereby authorized to make its bonds, and for the purpose of securing their payment, to mortgage its real estate and personal property, railway and all the appurtenances, franchises * * * * to such an amount as it may deem expedient, and to sell or negotiate the same at such a rate of interest or discount as it may deem for the best interest of the Company," &c.

June , 1868, twelve freeholders petitioned the Circuit Court of the County of Somerset in pursuance of such bonding act and three Commissioners were appointed.

Record p. 195-6.

Consent was obtained Sept. 19, 1868, also additional consent August 30, 1869, p. 235–247, and filed in Somerset County Clerk's office Dec. 17, 1868, p. 241, and Sept. 1, 1869, p. 247.

Bonds were printed bearing date January 1, 1869. Registered in Somerset County Clerk's office January 18, 1869, September 4, 1869, October 4, 1869, March 21, 1870.

Signed by the Commissioners before the registry but no seals attached.

Record pp. 226–235.

The Appellants deny by their answer that Curtis, the complainant, is the owner of the principal part of the bonds and claim that he has no right to prosecute this suit.

Record p. 21.

The Appellants claim that the want of seals was plenary notice to all persons that the so-called bonds were in an unfinished condition, not ready for negotiation, and that they were prematurely and improperly issued.

That the consents obtained were irregularly obtained, the bonds many of them issued before the last consents were obtained.

That the consents were obtained by misrepresentation and fraud.

That the Township neither solicited the Bonding Act, nor did any thing toward issuing such bonds, but that the whole business was under the management and control of the Rail Road Company and those under their employ, and the Commissioners were the agents of such Company.

That the so-called bonds were never negotiated for money but taken by the Rail Road Company and held directly in contravention of the statute.

That the bonds are not the bonds of the Appellants and were not executed according to the requirements of the statute.

That the Appellants received no benefit for the so called bonds and therefore no equity attaches to the Appellants—the Township.

The facts in the case of Morrison et al, as stated in the bill, are similar in all respects to those in the Curtis case excepting that the complainant in this case previous to May 5, 1874, purchased the following bonds, viz.: Nos. 51, 52, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65, 41, 42, 48, 49, 50, all for $1,000 each; also Nos. 130, 131, 142, 143, 144, 145, 109, 110, 111, 113, each for $500; also Nos. 160, 162, 163, 169, 171, 337, 338, 339, 340, 341, 210, 214, 215, 216, 217, 222, 223, 227, 228, 229, 265, 266, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 281, 282, 283, 286, 287, 183, each for $100, payable in periods from nine to twenty-five years. Pages 16, 17, paragraph 27.

That Morrison commenced action at law about May 5, 1874, in plea of debt for $20,000 in this court against Bernards Township. Upon filing declaration demurrer was interposed and overruled, plea *non est factum* filed, by which defense was set up that such bonds were not sealed; and it was true. Paragraph 29, p. 17. Bill.

That the bonds were taken without knowledge of such defect, which was an omission and mistake on part of Commissioners. Township had received full benefit, and failure to affix seals was a pure oversight and accidental omission. Paragraph 30, p. 18, Bill.

The prayer of the bill is that Stelle and Guerin or some or one of them may be decreed and directed to affix to the bonds opposite the signature of Anderson, Stelle and Guerin seals or scrolls, and that the Court will decree that the bonds be deemed and taken to be valid and effectual in law in all respects, as if sealed before issuing, and enjoining and restraining the Township from setting up want of seals a defence.

The answer is the same substantially as in the Curtis case, p. 27, denying that complainants are the owners of any of the bonds in their own right, mentioned in the bill, but simply custodians for persons residents in New Jersey, to the end that suit may be brought in this court.

Denies 1. That Commissioners had consents as required by law.

2. That the Commissioners had borrowed any money.

Alleges 3. that they never did execute or deliver any bonds.

4. That the pretended bonds are not the bonds of the Township, were not executed according to act of legislature.

5. That defendant, the Township, never received any consideration and no equity attaches to the Township in this respect.

6. That the complainants had notice that the bonds were irregular, illegal, improperly issued, to put them on their guard.

7. No mistake or oversight except in the writing and form of bonds and signing of Commissioners and delivering to the rail road company.

That none of the equities real or supposed, arising out of the acts of the Commissioners, attach to the Township, because

1. It did not ask or procure the act and was an unjust imposition upon the Township by the rail road company.

2. Township did nothing toward the appointment of Commissioners.

3. Consents were obtained by misrepresentations by agents of rail road company.

4. Township never received any consideration.

5. Township never authorized or adopted such bonds.

6. Township never had any stock of rail road or benefit therefrom.

7. Stock never of any value.

8. If complainants were any way misled it was not by Township or its officers or agents.

9. As against the Township complainant has no equities and not entitled to have bonds sealed. P. 28–29 Answer.

The Appellants claim that the decree is erroneous for the following reasons :

First—

That Cyrus Curtis, the complainant, was not the owner of the bonds upon and for which relief is now sought. That many other persons residents in New Jersey were and are the actual *bona fide* owners and this proceeding is a fraud upon the Court.

Second—

That the Bonds are not negotiable securities and want of seals is a deviation from the directions of the statute in the form of the so-called obligation, and has the effect of notice to the holder, sufficient to allow the defense as to fulfillment of conditions precedent to the issuing of the bonds to be set up.

Third—

That the Appellee and his assignors were negligent and such negligence bars recovery.

Fourth—

That the defense to the so-called bonds is equitable and just.

Fifth—

That the power to issue bonds is a statutory power and the Court cannot supply any defect. The alleged mistake, if any, was not such as a Court of Equity will correct.

I.

The Complainant was not the owner of the bonds for which relief is sought. Many residents of New Jersey are and were the *bona fide* owners of the principal part of the bonds.

[The references to the record will be found in the appeal of Curtis case.]

The answer, paragraph 1, p. 21, states that Curtis, for anything known to the defendant, may be a resident and citizen of New York, yet he, as to the principal part of the claims sought to

be enforced, is a mere trustee for divers citizens and residents of the State of New Jersey, in whose claims Curtis has no legal or equitable right or title whatsoever, and as to them has no right to institute or prosecute this suit.

The answer names Louis Burrows, Charles H. Mulford, Hampton O. Marsh, Henry Ball, Edwin Ford, James J. Cooper, George A. Lawrence, James Holmes, Matthew Mitchell, Horace B. Stone. p. 22.

The residences of these parties is proved to be just as stated in the answer.

By the evidence it appears also that these persons have bonds in this suit amounting to $18,600.

Matthew Mitchell, evidence, p. 54, paragraph 109.

Henry Ball, evidence, p. 67, paragraph 130, line 12 to p. 75, line 10.

Edwin Ford, evidence, p. 75 to paragraph 145, p.76.

James Cooper, evidence, p. 80, paragraph 151 to 152, p. 81.

James Holmes, evidence, p. 81, paragraph 152.

Horace B. Stone, evidence, p. 84, paragraph 157, line 21–30.

Lewis C. Burroughs, evidence, p. 111, paragraph 202, line 1–25.

Chas. H. Mulford, evidence, p. 112, paragraph 204.

Hampton O. Marsh, evidence, p. 116, paragraph 210.

Geo. A. Lawrence, evidence, p. 118, paragraph 213, line 10–20.

$23,600 is the face value of all the bonds sued on.

It is insisted that the complainant is clearly without the jurisdiction of this Court, as to the $18,600 represented by the above-named parties by reason of their residence being in New Jersey.

That question is at rest, as decided in the case of

Williams *v.* Nottawa, 104 U. S. 209.

Supported in theory by many cases, of which the following are apropos:

Hurst's Lessee *v.* McNeil, 1 Wash. cc. 83.

Smith, et al., *v.* Kernochen, 7 How. 198.

Jones, et al., *v.* League, 18 How. 76.

Barney *v.* Baltimore, 6 Wall. 287.

Bradley *v.* Rhine's Admrs., 8 Wall. 393.

Conklin's Practice, 162–4.

As to the $5,000, it is insisted no recovery can be had, because:

1st. They are void.

2nd. If the complainant can maintain any suit on these papers, he can only do so on the two bonds of $1,000 each, which belong to him.

II.

The bonds are void because they are not negotiable instruments. The want of seals is a deviation from the direction of the statute in the form of the obligation, and has the effect of notice to the holder sufficient to allow fulfillment of conditions precedent to the issuing of the bonds to be interposed as a defense.

The Township—the municipality—is a corporation of statutory creation. It can neither contract debts nor issue its obligations in payment of indebtedness excepting under statutory enactment. It is purely a creature of the Legislature, with such powers *only* as were conferred by Legislative enactment.

It is bound hand and foot by statute in all its proceedings; and, this being so, it cannot issue bonds except by express Legislative authority.

If this is so, and it cannot be disputed I think, then the right to issue these so-called Bonds in this case owes its creation and existence to the Bonding Act of April 9, 1868.

Therefore, whether these alleged bonds were legally issued or not depends entirely upon the close, strict, technical following of the provisions of the statute creating the right.

Jus. Bradley—The Mayor *v.* Ray, 19 Wall. 475.
Callahan *v.* Township of Morris, 1 Vroom 160.
Hudson *v.* Inhabitants of Winslow, 6 Vroom 437.
Morrison *v.* Bernards, 7 Vroom 219.
Swackhamer *v.* Hackettstown, 8 Vroom 191.

All conditions precedent to the issuing as well as the *issuing* were to be strictly pursued, the act technically complied with in all material parts or the acts of the Commissioners were nugatory.

The act was their authority. If they did not *strictly* pursue it, the alleged securities whether sealed or not were void.

Upon the argument below it was insisted that the Commissioners who signed these bonds had no power to issue coupon bonds or any kind of negotiable bonds in the mercantile sense.

It is said in the opinion of his Honor, Judge Nixon, that the Commissioners *intended* to seal the bonds, and the failure to do so was a mere oversight.

The question in this case is *not* what the *intent* was, but what did the *act* authorize.

Not what the Commissioners intended to do; but what they actually did.

They were mere *agents;* they had no will to exercise. The Township could give no authority or direction. The Act was the law, the law the *guide.*

The intent of the Commissioners can only be ascertained from what they did.

From the fact that they did not attach seals, the only conclusion as to intent which can consistently be reached is that they did not intend to do it, or they would have done so.

Did this Act give authority to issue coupon bonds?

A power to solicit subscription to the building of a rail road on behalf of a Township is not in itself authority to contract debts or issue bonds.

Such special powers are to be strictly observed and will not be enlarged by intendment to include a power not expressly conferred. See charge of Greer, Judge, in Ollrich & Co. *v.* Pittsburgh, 1 Pitts. 522.

Wilson *v.* City of Shreveport, 29 La. Ann. Rep. 673.

Weil *v.* Ricord, 9 C. E. Green 169, and 175 and cases cited.

This Bonding Act we insist gives no authority to issue *coupon* bonds.

Section 2 of this Act gives authority to borrow money and execute *bonds* therefor under the *hands* and *seals* of the *Commissioners respectively* upon certain conditions, for a term not exceeding twenty-five years, at a rate of interest not exceeding seven per cent. per annum, payable semi-annually, the bonds so to be executed may be in such sums, and payable at such times and places as the said Commissioners and their successors may deem expedient.

1. They are permitted to borrow for a term not exceeding twenty-five years.

2. The rate of interest not to exceed 7 per cent. payable semi-annually.

3. They are to execute bonds therefor.

4. Such bonds are to be under the hands and seals of the Commissioners respectively.

5. They may be in such sums, and payable at such times and places as the Commissioners and their successors may deem expedient.

Now, what kind of bonds were they authorized to issue under this power?

Coupon bonds must be *inferred* if it is claimed they are the kind of bonds which they had the right to issue under the Act. No special authority by the law is given for coupon bonds.

They are to *execute bonds under their hands and seals respectively*, the Act says.

"A bond is in itself a writing under seal." 1 Bouvier's Law Dict., p. 212.

Coupons attached are promises to pay, but not under seal. They are signed promises in this case. Where did the Commissioners get their authority to issue promises to pay interest upon bonds? Not from the Act; it is silent in regard to the manner in which the interest is to be drawn.

And this is important in another view. If the bonds that they had the authority to issue had been simple bonds, single or with a condition, and such bonds could have been drawn, (2 Jacob's Law Dict., Bond, p. 350,) the person or persons receiving them would have been just as well protected as to interest, and at the

same time it would have been more efficient notice to such persons that they were bonds specially issued, and not the usual negotiable bond according to the law merchant.

The Commissioners had no power to attach to each bond a number of promises to pay, which could be detached from the bond and set floating over the country, each of which subjected the Township to an action.

Without the Act the Commissioners can make *no bond*. The Act gives them no power to issue a negotiable bond according to the law merchant. Such bonds as they were authorized to issue were of a different character. They were to be bonds to secure money payable with interest.

If such bonds had been issued no person could take advantage of them, except the parties to them and therein named.

Hurlstone on Bonds, p. 1 Law Lib., Vol. 9.

The Commissioners in attempting to issue coupon bonds exceeded their authority.

The right of the obligor to avail himself of any defense by reason of the fraud, abuse of power, mistake, or other equities which may have occurred in the making or execution of the bond or its negotiation is one which belongs to an obligor in respect to every ordinary bond. Here it is a valuable one. The Commissioners being simply *agents*, having no power excepting such as conferred by the act, had no right to do anything in the discharge of their duty *outside of the act* which would cut off the defenses of the obligors, particularly when the obligors *could* have *no voice or say* in regard to the *character* of the bond or *its execution*. The Act was the authority *both* as to the *character* and *execution*.

It may be said that by making bonds of the character the Commissioners sought to make, viz.: coupon bonds, that money could be more readily realized for them. That is no answer to the power to issue them. The very thing which would have rendered them less salable would have made the obligors the more secure.

The Commissioners had no right or power to cater to the market; they could only do what the act authorized. If the money could not be raised by issuing bonds such as were authorized by

the act the fault was not theirs, nor the obligors,

And if under the terms and conditions of the not raise the money, then the bonds could not be too was no fault of theirs nor could they supply th Act was deficient, if it was deficient.

But the Act was not deficient. Bonds issued b aid in building rail roads the Legislature knew s fully guarded. The history of all such ventures was not intended by the act that the bonds should tiable securities. It was intended as notice to all they invested in this enterprise they must do so g value, and thereby it was hoped and believed the who would participate would be capitalists who w credly the trust reposed in them and see to it that perpetrated upon the Township. The sequel in this case shows the necessity for such safeguards and its wisdom. Shall the innocent Township be made to suffer for the incompetency, not to say over-reaching and unauthorized acts, of the Commissioners?

But these so called bonds *never were bonds.* They had no seals. Without seals they were *not* bonds. The Commissioners could only issue bonds under their *hands* and *seals respectively.* Whether they intended to seal them or not, is not the question, as I before stated. What they *did* is the question. They *did not* seal them. They did not intend to seal them, or they would have done so. The seal is a matter of substance. It gives to the obligation certain rights and legal protection which no other unsealed instrument possesses. It is not a formality, it is a part and parcel of the instrument. It imports consideration. It must be affixed at the time of execution. The delivery of a paper purporting to be a bond before sealing is a nullity.

Harman *v.* Harman, Baldwin's C. C. Rep. 131.
Taylor *v.* Glaser, 2 Serg. & Rawle 504.
Hopewell *v.* Amwell, 1 Halst. 169, 176.
Smalley *v.* Van Doren, 2 South. 811.

In Hurlstone on Bonds, p. 2 (Law Lib. Vol. IX) it is said:

"In every good bond it is essentially necessary that there be an obligor and obligee; that there be a sum in which the former is bound; that there be words sufficient to create an obligation; and that the instrument be duly executed." Pages 1–6.

1 Sheppard's Touchstone, § 6.

Blackstone says in his definition of deed, it must be sealed; nothing is said about signing.

The complainant therefore never had any bond of the Township of Bernards. No bond was ever issued under this Act. Not being the holder of a negotiable security, he has no rights as a holder of such securities would, and therefore can make no complaint.

The bill, by its prayer, asks that "the said several bonds * * * may be reformed * * * and the said Oliver R. Stelle and John Guerin, or one or some of them, may be decreed and directed by this Court to affix to said bonds, opposite the signatures of said John H. Anderson, Oliver R. Stelle and John Guerin, their seals or scrolls," etc.

Anderson is dead; was at time of filing bill. What authority have either of the others, if living now, to place his seal opposite his signature. They nor either of them are or ever were his agent. The act of sealing was to be the acts of the parties respectively,—each for himself.

How can any authority be delegated to the survivors to act for the dead Commissioner?

The want of seals was notice to the holder, that they were not negotiable instruments.

No deceit was practiced upon the complainant, no withholding information, no trick of legerdemain by which these bonds were put upon him, without being able to see and know fully just what he was getting.

The fault, if any, was his negligence and inattention—taking things for granted when he had no right to do so.

Neither the complainant nor those interested with him have any equity against the Township. The Township did not ask for,

obtain or have anything to do with the Bonding Act. The Legislature passed the law and it was done at the instance of the Rail Road Company then formed, then having existence under like legislative enactment,or, as has been said, the speculating agents of such corporation put it upon the Township. They asked for it, obtained it, profited by it, and the Township was to be the victim. The Township did nothing in the whole scheme. It neither had any hand in securing the law, appointing the Commissioners, securing consents, issuing bonds, nor did it ever get *anything* for these bonds from any source. The Township never received anything from Mr. Curtis or those he represents, nor did it ever negotiate the bonds to any one; held out no inducements to him or any one to purchase them, concealed nothing from him or them, but on the contrary has been ignored by all and every person having anything to do with the bonds from their inception until a default was made by the speculating agents of the Company having the rail road in vogue, in the payment of interest, and then for the first time she is called upon to pay—then for the first time she is regarded as being interested by those pretending to hold claims against her under these so-called bonds.

The plaintiff's securities being non-negotiable, void papers—bonds if they may be so called for the purpose of giving them a name—have no other equities nor have they any superior equities than the Rail Road Company from whom they were received. The bonds were procured by fraud, no consideration, because it is absolutely of no intrinsic value. They can have no equity under such circumstances.

Besides, sealing of the so-called bonds was one of the conditions precedent to the issuing of the bonds.

When the plaintiff and those associated with him purchased these bonds they had an opportunity to examine them.

A simple examination would have shown the want of seals. The failure to do so was not occasioned by any act or thing on the part of the defendants.

The want of such seals then being plainly before their eyes, the act distinctly stating that the bonds should be issued under the hands and *seals* of the Commissioners respectively, one of the conditions precedent to the making of the bonds in accordance

with the directions, true intent and meaning of the act, being wanting, it was notice; notice sufficient to put these parties on guard.

The Act said seals should be attached to the signatures of the Commissioners. No *seals* were attached. The Commissioners had failed to do the necessary act required by law to make the papers bonds as by law they were directed, and they were no more bonds without seals than they would have been without the signatures. No one will pretend that without signatures they would have been justified as innocent purchasers, and yet for all the care manifested by these parties they would just as quickly have taken them without signatures as without seals.

They must be *signed and sealed.*

Signing alone is not enough. Sealing alone is not sufficient, but both are required in order to give them the force and effect intended by the law. Both were conditions precedent to the fulfillment of the requirements of the act. It is such a deviation as to allow the other defenses to be set up by which it clearly appears that a fraud of the worst sort has been practiced upon a rural farming district, as I will endeavor hereafter to show.

The bill prays for no relief against the two surviving Commissioners excepting as stated above, viz.: that they seal the bonds. It asks for no decree for the amount claimed to be due on these instruments.

The bill asks aid in prosecuting this suit at law, and an order restraining the defendant from setting up the want of seals, which it admits are legal defences in that court.

To this prayer I make the three answers which were made in the court below and stated in the points.

1. The Appellee and his assignors were guilty of negligence and such negligence precludes him and them from the recovery here sought.

2. That the defense to these so-called bonds is equitable and just.

3. That the power to issue bonds is a statutory power and the Court cannot supply any defects.

III.

The Appellee and his assignors were guilty of gross negligence and such negligence bars recovery.

The bill states that upon bringing suit to collect interest the defendant set up as a defense to the action at law that the bonds were not sealed.

Record. p. 19, paragraph 29.

It no where states any reason why they were not sealed. It charges that "the failure to affix seals was a pure oversight and accidental omission."

Page 19, paragraphs 29, 30, 31.

No charge of fraud is alleged on the part of the Township or Commissioners, nor is any excuse given excepting "oversight and accidental omission."

The Township by the answer p. 31, paragraph 30, states that it does not know why the Commissioners did not affix seals to said so-called bonds and it is immaterial what those reasons may have been," &c.

The Commissioners by their answer, p. 38, paragraph 24, say "that they did not know, nor did it occur to them, nor did any one mention to them that it was necessary to seal them," &c.

Nor is this strange. The Commissioners simply acted as they were directed by the agents of the Rail Road Company. They did not prepare the bonds nor have anything to do with their preparation. They signed when and where they were directed by those whose agents they really were, viz.: the Rail Road Company.

Answer, p. 38, paragraph 24.

Evidence of John Guerin, p. 169, line 29 to side paging 302.

Evidence of O. R. Stelle, p. 156, line 35 to line 11, p. 157.

Evidence of O. R. Stelle, p. 158, line 3 to p. 159.

Now, as elsewhere stated, the seals imported consideration. Without seals a printed paper signed was no bond. These papers on their face showed they were payable to bearer. Every person purchasing knew he would have no recourse to the vendor unless some fraud was practiced upon him by the vendor. Knowing this they also knew or should have known that it was

their duty to make such examination as would enable them to know they were receiving what they purchased. If, therefore, they had the opportunity (and they had, they all say) to examine and they did not, but purchased blindly, they are in no better situation than if they had examined, seen that there were no seals and then purchased.

"He need not look if he does not choose; but then if he does look, he must bear the penalty of being held to have looked, and if he either shuts his eyes or carelessly sees, he shall not be allowed in a court of law or *equity* to say 'It is a mistake, I never knew it,' because he might have known it and he ought to have known it," &c.

Per Lord Brougham, in the Duke of Beaufort *v.* Neeld., Clk. & Finnelly 282–3.

Equity will not relieve from a mistake occasioned by one's own negligence. If by reasonable diligence he could ascertain the defect, and failed to do it, equity will not relieve; it would simply be an encouragement of culpable negligence.

1 Story's Equity Juris. § 146.
Dillet *v.* Kimble, 10 C. E. Green 67.
Deare *v.* Carr, 2 Gr. Ch. Rep. 513–517.
Voorhees *v.* Murphy, 11 C. E. Green 434.

The want of seals then was notice.

Curtis was not sworn. Mitchell purchased the bonds for him of a broker. In regard to this purchase Mitchell on p. 54, line 5 says, "At the time I purchased these bonds I did not nor Mr. Curtis so far as I know, notice that they were not sealed or

that there was any defect in them; we took it for granted that they were all right."

He bought without looking, he made no effort to look; he gives no reasons why he didn't look; he says he never saw the bonds until after he bought them, p. 58, also p. 59.

John L. Welling, p. 62, purchased bonds, being now in this suit, Nos. 27, 245, 247, 359, making $1,300 prosecuted for the use of Gardner K. Nanney; No. 45, $1,000 for the use of Wm. J. Sly, administrator of Maria Nanney, also a bond of $500. He says on p. 62, "I did not notice at the time I purchased them that they were without a seal." P. 64 he was asked, "Did you read the bonds before you bought them?" *Ans*–"I don't think I did; I depended on Mr. Buckley."

He represented all these purchasers—was their agent, and notice to him was notice to all.

Henry Ball, the next witness, p. 67, has $4,000. P. 68 he says, "the Commissioners' names were all signed, and also the clerk's; I had heard that some of the bonds only had two Commissioners' names on and so I was particular to see that there was three on all of mine, so I looked at the bonds; I did not notice whether or not there was any seal on."

What more complete notice could be given?

Edwin Ford, p. 75, says bonds Nos. 13 and 37, representing $2,000, he bought, "I own these bonds yet." P. 79 he says, "I did not notice when I took the bonds that there was no seals on them."

James Holmes, p. 81, says, "I didn't notice that they wanted seals on." He owns bonds Nos. 11, 12, $2.000.

James J. Cooper, p. 80, owns bonds Nos. 6, 14, 88, 101, 167, 168, 174, 175, 176. "He did not notice at the time he purchased said bonds that there were no seals on said bonds."

Horace B. Stone, p. 84, owns Nos. 94, 95, 96, 97, 99, 100, in all $3,000. "I did not observe at the time that there were no seals on them." P. 87, line 24 the question is asked, "Did you then and there read those bonds or any of them?" See his reply and what follows on that page.

Silas C. Young, p. 90, owns bonds Nos. 258, 259, $200 in all. On the bottom of p. 90, he says, "I did not notice when I bought

them that there were no seals on them; I didn't open them when I bought them."

P. 91. *Ques.* "How long was it after you bought and received the bonds before you opened and read them, as near as you can tell?"

Ans. "Probably two weeks."

Ques. "After you opened and read your bonds did you take them back * * * * * because they were defective?"

Ans. "No, sir."

Ques. "Why didn't you?"

Ans. "I did'nt suppose they were defective."

This man either didn't know what a bond was or was so careless and negligent as to deserve to be punished. If he didn't know then he had no right to be purchasing securities about which he was unable to form any judgment as to defects, and should have sought advice.

Lewis C. Burroughs, p. 111, owns Nos. 68, 157, 158, 159, $800. He says, "I didn't notice when I got them that there were no seals on them." Side paging 203, he says he opened them and read them.

Chas. H. Mulford, p. 112, owns No. 36, $1,000. "I did not notice at the time that there were no seals on it." P. 113, just before he closes his evidence, he says he never discovered want of seals until then.

Hampton O. Marsh, p. 116, owns No. 89, $500, says, "At the time I took the Bernards bond I did not notice the lack of seals on it." P. 117, he says, "the bond was folded when delivered; did not unfold it nor read it; no recollection of ever before that day of examining it."

Geo. A. Lawrence, p. 118, owns bonds 150, 180, 182, bought of a stranger—the very thing which of all things should have put him on guard, says, "I did not observe at the time I bought them that there were no seals on them." Side paging 215, thinks he read the bonds and saw the signatures at the time they were delivered to him.

The following is a list of the witnesses in the Morrison case, and reference to their evidence as to residences, knowledge of want of seals and care exercised in purchases of bonds:

William Parker, now a resident of Philadelphia. At time of

sale was broker in New York; sold bonds to Morrison 1870, p. 47; six or seven years after the purchase was first he knew no seals were on bonds, p. 50; Hanford brought bonds to him in Spring of 1870, p. 51, September 20, $40,000; he was a contractor, p. 52; first sale was June 8, 1870; bonds were left a month or so before, p. 52; he told me how he came by the bonds, p. 52; he told me they were subscriptions for stock, p. 53; I opened and examined the bonds, p. 53; saw they had signatures and know the signatures have not been put on since, p. 53; knew the difference between a bond and note, p. 53; no trick to deceive me, p. 54; read the bonds, p. 54; examined all the bonds received from him, p. 55; had opinion of Mr. Parker and Gov. Randolph that bonds were good, p. 57; parties bought some to whom I sent them c. o. d.; never saw the parties, trusted to the broker, p. 57; knew the Governor as trustee held mortgage for $3,000,000 and that bonds were given for stock, p. 58. (He must have known the consideration to be valueless.) If the Township lost its stock, the loss was overbalanced by benefit of being nearer New York, p. 59; knew that the Township had a Director for its stock, p. 59.

Gardner S. Hutchinson, New York merchant, in business in New York, p. 59; (don't say where his residence is); brought suit for payment of these bonds, p. 59; July 27, 1880, bought $10,000 for 80c., p. 60; didn't examine them at all, didn't open them, p. 60; didn't know until after placed in hands of counsel for suit that they had no seals, p. 60; corresponded with persons holding bonds and procured them for purposes of suit, p. 60; I bought Nos. 51 to 61 $9,000 of $1,000 each and Nos. 130, 131 for $500 each, in all $10,000, p. 60; Nos. 41, 42 placed in my possession by James E. Clark of Philadelphia of $1,000 each, $2,000; No. 48 for $1,000 and No. 113 for $500 were placed in my hands by S. S. Van Saum of New York, Orange county, $1,500 in all; Nos. 49, 50, $1,000 each, were placed in my hands by H. E. Halsey of New Jersey, $2,000 in all; Nos. 210, 214, 215, 216, 217, 222, 223, 227, 228, 229, 265–279 inclusive, 281, 282, 283, 286, 287 of $100 each were left by Mr. Halsey of New Jersey, in all $2,900, p. 60; No. 183 for $100 I received from Israel Ward of New Jersey, p. 60; five bonds 337 to 341 inclusive, each $100, placed in my hands by Samuel P. Bell of New

York; Nos. 62, 63, 64, 65, each $100, from T. M. Delaney, Philadelphia; Nos. 109, 110, 111, $500 each, by L. Fullager of New York; Nos. 160, 162, 163, 169, 171, of $100 each, by H. G. Manahan of Virginia, p. 61.

All that I have invested are of face value, $10,000, p. 61.

Ques. And from the others, if collected, you will receive no part of the money collected?

Ans. I shall probably receive all the money collected directly in the first instance.

Ques. I mean you will not receive it as your own property?

Ans. No, sir; I expect not, p. 61.

Ques. What was your object in making that combination?

Ans. To have as many bonds of the Township represented as possible, and for the purpose of avoiding expense to myself, and also that those other gentlemen might on their own part be saved the expense of separate suits, p. 61.

Ques. When you paid your check and got the bonds, you had never looked inside and read the face of any of them?

Ans. I never did, p. 62.

Ques. Your reason is, that it is not the fashion in New York to read them?

Ans. Not at all; it is simply because I am careless, probably, p. 63.

James E. Clarke, resides in Philadelphia, p. 64. Owns Nos. 41, 42, $1,000 each; paid for them in advance; didn't know of absence of seals until after commencement of suit, p. 64. Before purchasing read the Bonding Act; knew that there was no authority to change bonds for stock, p. 65; bought them without seeing them, p. 66; read them as soon as received; knew that bond implied sealed instrument, p. 66; could withdraw bonds from this suit if I paid my proportion of the expense, p. 67.

Theodore M. Delaney, resides in Philadelphia. Bought Nos. 62, 63, 64, 65,$1,000 each, 142, 143, 144, 145, $500 each, June 23, 1870, p. 67; examined bonds before putting them away; did not notice that they were not sealed; after suit commenced learned they were not sealed, p. 68; looked into bonds a moment after making purchase; read them over when I got home; looked to see if Commissioners' signatures were on; didn't notice

seals were not on, p. 69; am to pay pro rata expenses of suit, p. 69.

Wm. Parker sent Fullage his bonds by express, p. 70.

Judge Nixon refers in his opinion overruling the demurrer as to his views upon the merits of the case.

Opinion on demurer, p. 29-30, Morrison record.

Opinion on the bill, etc., p. 73-74 Morrison record.

Every one of these persons had notice. They were guilty of gross negligence who did not look, and those who did, and notwithstanding purchased, what shall be said of them?

It was a defect which could not be concealed. When they saw the bonds they are presumed to have seen the contents; if they did not, whose fault was it? Certainly not the fault of the Township. It interposed no obstacle. If these persons had exercised prudence, care, observed the defect as they thus would have done, this litigation would have been saved and they their money.

Chancellor Green in Van Doren *v.* Robinson, 1 C. E. Green 257, says, "Notice of a deed is notice of its contents." And on page 261 cites authorities in support of the proposition, that constructive notice is knowledge imported on presumption. But it may be said papers, bearing the semblance of genuineness, would lead people to make mistakes. That the Township, through the Commissioners, caused these papers to go upon the market, and therefore should be held. Such an argument falls with its statement. Business is business; business men do not do business in that way.

Hunt *v.* Ronsonanier, 8 Wheaton 174, is a case against such a theory.

Suppose the bonds had not been signed (and for all the care exercised by the purchasers, they might as well not have been), and thus thrown upon the market and purchased. I suppose we would be asked to sign them because we had *intended* to do so.

Many purchased without looking, and did not know for years after their purchase that there were no seals upon them—some admit that it was carelessness; all are obliged to admit negligence. But the Commissioners never intended to sign or seal, excepting for the purposes of the Act. The utter, absolute failure, the outrageous fraud practiced upon the Township by the Railroad Company, or its Managers, warrants the charge that the Commissioners did right in not sealing, and wrong in signing.

If this is so, then

IV.

The Complainants' case is without equity, and the defense to these bonds is equitable and just.

1. I have attempted to show that the alleged bonds were not negotiable according to the law merchant; that the want of seals is a deviation from the directions of the statute, having the effect of notice to the holders.

2. That the Commissioners had no power to issue any coupon bonds or bonds negotiable by the law merchant.

3. That the Appellee and his assignors were guilty of negligence, by reason of the defect upon the face of the bonds, and their purchase was with full notice of the defects, and that in whose soever hands the said bonds are they are open to all the defenses which were ever against them the same as between the original parties to them.

If this is correct then the holders are in no better situation than the Rail Road Company.

The Township was in no wise a party to this whole proceeding. The Act of the Legislature chartering the Rail Road first was passed. The Township had no hand in that. A few years passed by and then the Bonding Act is passed. The Township did not ask for that. It was put through by the agents of the Rail Road Company. Then next follows the appointment of Commissioners. The signers, applicants for these appointments, were procured through the instruments of the Rail Road Company. The consents are obtained—such as they are—and the next thing bonds prepared by the Rail Road managers are presented to the Commissioners to sign. The

Township in no manner profited by it, but having no voice or power was caught through the management of these schemers having the interests of the Rail Road only in hand, for personal profit and engaged in this nefarious business for peculation.

Answer, p. 21, line 25 to line 35, p. 22.
Answer, p. 23, line 6 to 24 line 20.
Answer, p. 26, paragraph 17 to 18, p. 27.
Answer, p. 27, paragraph 19 to 20, p. 28.
Answer, p. 31, paragraph 29 to close p. 32.
Deposition of John O. Rush, p. 124 to line 34 p. 125.
Deposition of Charles N. Conkling, p. 126 to p. 127.
Deposition of Jno. Compton, p. 128 to line 10 p. 130.
Deposition of Oliver R. Stelle, p. 136 to line 40 p. 139.
Deposition of Oliver R. Stelle, p. 140 line 13, to bottom page 141.
See Exhibit B. 3 on part of Defendants, p. 202.
Deposition of John Guerin, p. 160 to 161.
Deposition of John Guerin, p. 163, line 40 to line 12, p. 164.
Deposition of John Guerin, p. 166, line 30 to line 10, p. 167.
Deposition of Samuel R. DeCostar, p. 171 to line 15, p. 172.
Deposition of Oliver Dunster, p. 173 to p. 174.
Deposition of Ferdinand Van Doren, p. 174, 175, 176.
Deposition of Aaron Dilley, p. 177 to cross-examination, p. 178.
Deposition of Jerome Hildebrant, p. 181 to cross-examination, p. 181.
Deposition of Henry Baird, p. 183 to cross-examination, p. 183.
Deposition of Charles Barker, p. 185 to line 15, p. 186.
Deposition of Wm. DeMun, p. 186, 187.
Deposition of Garret V. Freeman, p. 187.
Deposition of Ralph Davenport, p. 190 to 191.
Deposition of Abm. T. Huff, p. 192.

Evidence of this sort could have been given *ad libitum*. A class of as respectable, reputable witnesses, as can be found in any farming community, induced to sign consents, not because they

really wished to do so, but because of the representations that the road was to be built, and built by the Townships through which it was to run, and the first lien would be given to the Townships so that they would be secure for the bonds which the people were consenting to have issued.

Judge Anderson was the moving spirit. He was the Director of the Railroad, the agent of the Company, and the man in whom the people of Bernards had confidence. They trusted him. The consents could *never* have been obtained save through his agency. Stelle and Guerin both feared the bonding business. Neither of them wanted to go ahead. They looked to Judge Anderson; he had been Surrogate and Judge, and held positions of trust, and they, in their misgivings, went to him; he inspired them with courage and confidence; he induced them to accept the position of Commissioners; they were unwilling instruments, and he persuaded them to accept and act; as he directed they did in all things. The evidence of Guerin and Stelle shows this all the way through. They were in his hands to do as he wished. He did it; and who *was* he? The agent of the Rail Road Company; doing the bidding of the Company; they had their contracting agents to go about with him to encourage him in his work for them. Why manifest such interest if the Township alone was the party in interest; the Township did nothing, nor could it do any thing. It was not profited, nor could it be profited. The people consenting, were induced to do so through Judge Anderson. Those whom he saw he persuaded; those whom he did not see, but were seen by Stelle and Guerin, were inspired to sign by reason of Anderson's recommendation and persuasion. The absolute unqualified truth is that Judge Anderson, and no other man, procured the consents. Excepting for him it *never, never* would have been done. He was not a dishonest man, but a thoroughly honest one. The Railroad Company, however, had completely captured him; he had been lifted off his feet by them, and he was dwelling in an atmosphere of rail road sweetness, free from any thought of disaster to the Township,or injury to his neighbors. It had become a mania with him, and he caused others to be infected by reason of his assurances. He deceived the people, not intentionally, but because he was deceived and already, unknowingly, a victim in the hands of the conspirators; they had

him so completely bound by prospects then present and future (Director now, President afterward), that in his unbounded enthusiasm he went the lengths which his good judgment, under other circumstances, would have rebelled against most vehemently.

At the time these consents were obtained, there was no right to mortgage the road. The Legislature had not yet been asked. It may be said that was unnecessary; that makes no difference, indeed, only so much the worse; the people thereby were the more deceived; they were induced to believe, by reason of there being no law authorizing a mortgage, that the statements made that the Township would have the first claim were unqualifiedly true. They thought the road would be free of debt; it would belong to the Township; no law authorized a lien, and therefore no lien prior to theirs could be had. It was the scheme to withhold until after the consents were obtained, the Township fastened. the bonds supposed to be issued, then the plunderers would procure legislative authority to mortgage the road and thus wipe out the stock given for the bonds to the Township. They thought they had to have legislative aid, or why did they procure it?

At the very next session of the Legislature after they procure the bonds as they suppose, then they procure the authority to mortgage to any amount, and thus render worthless any security the Township might hold by way of stock.

Laws 1869, p. 425.

Would these taxpayers have consented if these representations had not been made to them? Were the representations true in point of fact? No one will pretend it. If not, then the people were deceived, and a fraud was practiced upon them.

Immediately after procuring authority to mortgage, the Company, March 11, 1870, mortgages its road, franchise and everything it has, to secure bonds to the amount of $3,000,000 Ans. p. 28, line 7, etc.

Exhibit B 11, on part of Township, p. 212.

By deed of Randolph, Master, September 12, 1878, the whole railroad—land, franchises, engines, cars, etc.—everything was sold for $51,580 and conveyed under that mortgage, the Town-

ship left with a worthless lot of stock, the consideration for the bonds a total failure, and worthless absolutely.

But the Commissioners exceeded their powers under the act when they issued the bonds, even though they were bonds. They purport to have been issued January, 1869. They bear that date. Soon after, they were delivered to the Rail Road Company.

At the time they bear date, as well as when delivered to the Rail Road Company the requisite consents had not been obtained.

§ 2 of the Bonding Act says: "But no debt shall be contracted or bonds issued by said Commissioners * * * * * until the written consent shall be obtained of *the majority of the taxpayers* of such township, or their legal representatives, appearing upon the last assessment roll, and shall represent a majority of the landed property of such Township—including lands owned by non-residents—appearing upon the last assessment roll of such Township. Such consent shall state the amount of money authorized to be raised in such Township."

The majority of taxpayers, also the majority of the landed property of such Township.

Lane, et al., *v.* Schomp, et al., 5 C. E. Green 82.

In 1867 the assesssment roll shows 804 taxpayers. The consents show only 236.

Answer, p. 22, paragraph 8.

McMurtry, the Assessor, Stelle and Guerin, two of the Commissioners, all admit that the consent papers procured in 1868, and filed in the office of the Clerk Dec. 17, 1868, p. 235-241, did not contain a majority of the taxpayers of the Township of Bernards assessed for the year 1867.

Evidence of McMurtry, p. 99, cross-examination, to line 40 p. 102.

Evidence of McMurtry, p. 103, line 43 to line 4 p. 105.

Evidence of Stelle, p. 139, line 45 to line 15 p. 140.
Evidence of Guerin, p. 161, line 13 to line 27 p. 162.

This evidence stands uncontradicted. Clearly this was contrary to the law. January 1, 1869, the bonds were issued. Were they *lawfully issued* at that time? It can not be pretended they were. If they *were* issued then, could these same bonds be issued again? If they were illegally issued, could any act afterward make the issue of January 1, 1869, lawful?

By the decision in the case of Morrison *v.* Bernards, 7 Vroom 219, it is settled that the affidavit of the Assessor is not conclusive. If the bonds were sealed even, by this proof it is shown they were void; they were issued without lawful consent. The conditions precedent to issuing of the bonds had not been fulfilled.

7 How. 1.

Additional consents were filed with the County Clerk Sept. 1, 1869. The purpose was to make complete, if possible, what should have been filed Dec., 1868, before the bonds were issued.

Of what force and effect were these additional consents? The bonds had been issued and passed to the Rail Road Company, and already accepted by them in that condition knowingly. If they were good, legally issued, then the additional consents were unnecessary. If they were illegally issued could 138 additional consents, procured months after the first consents, not a part of them, in no manner connected with them, procured at a time too when the condition of things was changed by reason of the legislative authority to mortgage the road; could 138 consents of mere poll taxpayers, not landed property consents, bind those persons consenting under a different condition of things, so as to be a part with and of them, and thereby bind the real estate of that Township? It is not what the Commissioners intended to do here either. It is what they did. They did *not* have a sufficient number of consents according to the law at the time the bonds were signed, delivered and accepted. The signatures *first* procured

could not, subsequently, under the different state of things, have been procured at the time the second consents were procured.

Evidence of O. R. Stelle, p. bottom 147 to line 18 p. 178.

The present holders stand in no better attitude than the Rail Road Company as holders. The Company took them before being legally issued without seals without objection. They knew they were not sealed because they had the bonds prepared, directed the signing and had their representatives present at the time of signing. The bonds were not allowed to remain in the hands of the Commissioners after signing but at once the Treasurer took them. Did not Craig, the Treasurer, know they were not sealed? He must have known it.

But it may be said the subsequent consents were a ratification. The parties signing the last consents had nothing to do with the first. A period of several months had intervened, the first signers were not called on to approve of their former action under the altered condition of affairs, and no ratification can be insisted upon unless it was with full knowledge and some act or thing done warranting the claim to a ratification. Here nothing was done.

Delafield *v.* Illinois, 26 Wend. 192.
Freeman *v.* Resher, 13 Q. B. 780.
Owings *v.* Prall, 9 Peters 607.

V.

The power to issue bonds is a statutory power and the Court cannot supply any defect. The alleged mistake, if any, was not such as a Court of Equity will correct.

The Act says sign and *seal*. Sealing is part of this law.

Kerr on Mistake and Fraud p. 444, says that there is "in cases of defective execution of powers a distinction between powers which are created by private persons and those which are specially created by or come within the statute. The latter are

construed with more strictness, and whatever formalities are required by the statute must be punctually complied with. In case of powers which are in their own nature statuable, equity mus follow the law be the consideration ever so meritorious," and cases there cited.

Bright *v.* Boyd, 1 Story's Reports 478, 486, supports this proposition.

In the case of McBride's heirs *v.* Wilkinson, 29 Ala. 662, 667, upon bill to reform an acknowledgment of a *feme covert* to a deed conveying land, the Court said, "The bill is, in effect and substance, one for reforming the certificate, and aiding or supplying the defective execution of a power created by statute. It is, therefore, totally destitute of equity; for, although a court of equity may relieve against the defective execution of a power created by a party, yet it cannot relieve against the defective execution of a power created by law, *nor dispense with any of the formalities required thereby for its due execution.*"

The case of Morran *v.* Detchemendy, 18 Missouri 522–536. A Sheriff's deed, purporting to have been signed, sealed and delivered, but in fact had not been sealed. The certificate of acknowledgment was to the effect that he had signed, sealed and delivered the same. The Court held it could not be reformed or supported in equity.

Speldt *v.* Lechmere, 13 Vesey 588.

1 Story's Eq. Jurisprudence, § 171.

The common law will not inquire into the *consideration* of a

deed, because of the solemnity and deliberation with which it is executed.

Three things were necessary,—1st, signing, which requires deliberation; 2d, sealing, which requires like deliberation; lastly, delivery, the consummation.

They, the Commissioners, were to seal. It was a statutory power enjoined upon them, and only to be exercised after that due deliberation requisite by law.

Sug. on Powers, Vol. 1 p. 330.

Can the Court for them exercise the deliberation enjoined by law upon these officials?

The sealing was an exercise of a power—it was a personal power.

ALVAH A. CLARK,

Of Counsel for Appellants.

109-341

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 96.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY,

APPELLANTS,

vs.

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Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 96.

The Inhabitants of the Township of Bernards, in the County of Somerset and State of New Jersey, (Defendants below,)
Appellants,

vs.

George N. Stebbins, executor of Cyrus Curtiss, deceased, (Complainant below,)
Respondent.

On Appeal from decree of Circuit Court of the United States, for the District of New Jersey.

Statement of facts and argument in behalf of the complainant and respondent, by
H. C. PITNEY.

The complainant, a citizen of New York, filed his bill in the Court below, praying that the defendants might be restrained from setting up as a defence to any action at law to be brought on certain bonds issued by the defendants below, that the same were not sealed.

A decree was made for the complainant in accordance with the prayer of the bill. See pp. 20, 250 of record.

The defendants appeal from that decree.

The defendants are a municipal corporation existing under the Statute Laws of New Jersey.

In 1865 the Legislature of New Jersey passed an act, entitled "An Act to charter the Passaic Valley and Peapack Railroad Company," and the same was duly organized. Bill, par. 1, p. 9 of record; Ans., par. 1 A., p. 21 of record.

The Railroad, thereby authorized to be constructed, necessarily crossed Bernards township, and a route therefor was surveyed and laid out accordingly. Bill, par. 5, p. 10; Ans. par. 5, p. 21.

In 1868 the Legislature of New Jersey passed an act (printed and annexed hereto, and called '*the bonding act*,') authorizing the townships along the route of the proposed road to aid in the construction of it by the issue of their bonds. Its passage was advocated by the Senator from Somerset county, John H. Anderson, who was a resident of Bernards township, and had been a Judge of the County Court and Surrogate of the county; and also by Mr. Bergen, the member of the Assembly representing the district in which Bernards township was included.

Ralph Davenport, p. 190, 191;

Abraham T. Huff, p. 191, 192.

Shortly after the passage of this act, application was made by twelve freeholders (under the provisions of the first section) to the Circuit Court of the county of Somerset held by Justice Dalrimple, who duly appointed John H. Anderson, John Guerin and Oliver R. Stelle, commissioners, and they severally took the proper oaths of office. Bill, par. 6, p. 10; Ans. par. 6, p. 21. Record, p. 195—198, where the application, appointment and oaths are printed. Exhibit C 47.

The commissioners gave the bonds required by the statute.

Bill, par. 7, p. 10; Ans. par. 7, p. 22;

Stelle's evidence, p. 138;

After which they proceeded separately to canvass the

tax-payers of the township (under the provisions of the bonding statute), each being provided with a separate consent-paper, and having assigned to him a portion of the township.

Stelle, p. 139;

Guerin, p. 161.

After they had procured a number of signatures, they met—September 19, 1868—and called in Mr. McMurtry, the township Assessor, and submitted to him the three lists of consenting tax-payers, attached to each other. The commissioners, on that occasion, severally made affidavits of the genuineness of the signatures of the tax-payers, and the Assessor made the affidavit required by the bonding Act. All were together at the time.

McMurtry, p. 102 (commencing about 12 lines from bottom), p. 103.

The three original consent-papers, so attached to each other, with the several affidavits, were then filed in the County Clerk's office, and a certified copy filed with the town Clerk.

Bill, par. 8, p. 10; Ans. par. 8, p. 22.

This conglomerate document is printed, commencing at p. 235, and ending at p. 241 of record. See original Exhibit C 45, a copy of which is annexed hereto, paged A to K.

The commissioners and Assessor at first acted upon the view of the bonding act that it was not necessary to get the consent of a majority of the tax-payers, but only of a majority in value and number of real estate owners.

Stelle, p. 139, 140;

Guerin, p. 161, 162;

McMurtry, p. 103, bottom; 104, top.

The affiidavit, however, is in strict accordance with the language of the Act, p. 240, bottom, 241, top.

In December, 1868, the commissioners, acting on this authority, subscribed for 2,540 shares at $50 each, equal to $127,000 of the capital stock of the Railroad Company, and being less than ten per cent. of the assessed value of the real estate of the township.

Bill, par. 13, p. 12; Ans. par. 13, p. 24; Original book

of subscription, Exh. C 56; Evidence of *Stelle*, p. 148, bottom.

The commissioners then made an arrangement with the officers of the R. R. Co. to take the bonds of the township in payment of the stock subscription—to exchange bonds for stock—the bonds to be delivered to the R. R. Co. in installments as calls for payments on stock subscriptions were made, and as the work on the road progressed.

Stelle, p 142, 143, 144, 145, 146, 147;
Exhibit, B 4, p. 203;
" B 5, " 203;
" B 6, " 204;
" B 7, " 204;
Craig, p. 193, 194;
Ans., par. 10, p. 35;
Guerin, p. 165, bottom, 166, top.

On January 16th, 1869, the commissioners signed twenty per cent. of the whole issue ($25,400), and delivered it to Mr. Craig, the treasurer of the R. R. Co., upon the receipts, Exhibits B 5 and B 6—that is,—one-half of the batch signed to be delivered to the R. R. Co. in payment of the first call for stock, and the other half to hold until the second call; and both for registry.

Guerin, p. 163--166.

The bonds in this batch were registered January 18th, 1869, as shown by the Registry. Exhibit for compl't, p. 225--227.

These bonds ($25,400) were taken by the R. R. Co., and put in circulation.

No further bonds were registered until Sept. 4th, 1869.

While these commissioners were operating in Bernards township, others were operating in the adjoining townships of Bedminster and New Providence; all acting on the same construction of the act, viz. that a majority of real estate owners only was required.

In the Spring of 1869, certain tax-payers of Bedminster combined and filed their bill in the State Court of Chancery against the commissioners of that township, questioning this construction of the act; and the Chan-

cellor restrained their action, holding the assent of a majority of all the tax-payers requisite.

Lane vs. Schomp, 5 C. E. G., N. J. Eq. R. 82.

The commissioners for Bernards, upon the announcement of this decision (Ans. of Stelle and Guerin, par. 7, p. 34; evidence of *Stelle*, p. 149, near bottom; evidence of *Guerin*, p. 166, bottom), began a new canvass of the tax-payers and procured a second set of signatures to a second set of consent-papers, and upon this second set of consent-papers new affidavits were made.

Exhibit C 6, printed in the record, p. 241—247; and also annexed hereto, p. K—T.

This last set was filed in the County Clerk's office, Sept. 1st, 1869, previous to the registry of the second batch ($10,000) of bonds, which were registered Sept. 4th, 1869.

On October 12th, 1869, further bonds to the amount of $45,500 were registered; and on March 21st, 1870, the remaining bonds were registered.

A summary of the registry is as follows:

1869, January 18th, - -	$25,400
" September 4th, - -	10,000
" October 12th, - -	45,500
1870, March 21st, - -	46,100
Total,	127,000

There were sixty-five bonds of $1,000 each, numbered from 1 to 65; eighty bonds of $500 each, numbered from 66 to 145; and two hundred and twenty bonds of $100 each, numbered from 146 to 365.

Sometime after September 1st, 1869, all the bonds were signed by the commissioners and delivered to Mr. Craig for safe keeping in the vaults of the Bank of which he was cashier, and for registry and delivery to the R. R. Co. from time to time, in batches of $12,700 each, in payment of installments of ten per cent. of the stock subscription, as called.

Ans. of Stelle and Guerin, p. 35, par. 10;
Craig, p. 193, 194;
Stelle, p. 146, 147, 157, bottom;
Guerin, p. 163, 164, 165, bottom; 166, top.

Upon the delivery of the last batch of bonds to the Railroad Company, the commissioners received a certificate for 2,540 shares of stock.

The original of this certificate is pasted in the original book of certificates, Exhibit C 54; and a copy is printed herewith, *post*, p. **55**.

The name of the Railroad Company was changed to the New Jersey West Line Railroad Company by act of February 15th, 1870 (bill, par. 21, (*a*), p. 15; Ans., par. 21, (*a*), p. 29); and when the commissioners assigned a portion of this stock to Beekman, they received a new certificate for the balance in the new name, printed at p. 199, 200 of the record.

The bonds so received by the Railroad Company were paid by it to its contractors for work done in the construction of the road (Ans., par. 14, p. 25), and the bonds were sold to the public mainly through brokers—Parker & Lawrence, and V. B. King & Co., of New York; and M. A. Brookfield and Richard Smith of Morristown.

The road was actually constructed from Bernardsville to Summit, (a station on the Morris & Essex Railroad in Union county), a distance in all of about twelve miles, of which five miles were in the township of Bernards. Trains have been running on it ever since its construction, connecting with trains of the Morris & Essex R. R., or its lessee, the Delaware, Lackawanna & Western R. R.

Bill, par. 20, p. 14;

Ans., par 20, p. 28;

McMurtry, p. 106;

Stelle, p. 153, below the middle.

In June, 1871, a majority of the stock and the control of the road came into the hands of Judge Packer, President of the Lehigh Valley Railroad, a Pennsylvania corporation seeking a New York connection and controlling ample means to finish the road by extending it each way to the Delaware and Hudson rivers.

Guerin, p. 168;

Stelle, p. 151, 152;

Exhibit B 8, printed at p. 204, being an extract from the minutes of the meeting of the Directors.

Letter of Stelle to Packer, Exhibit B 3, p. 202.

Packer was evidently forming his plans to that end, when the commissioners entered into a contract with one Beekman (Exhibit C—, printed in the answer of Stelle and Guerin, p. 36, 37 of record; also the duplicate at page 248), by which they agreed to turn over the control of the road to him. This was done; the Packer Directors were turned out, and the Beekman Directors were put in in June, 1872, with disastrous results.

Evidence of *Larned*, p. 50, 51;

Proxy, Exhibit 2 for def't, p. 247.

The commissioners throughout took an active part in the management of the road, one or the other of them being a Director from the first.

The omission of the seals from the bonds was a simple oversight, which nobody noticed or thought of, until long afterwards.

Stelle, p. 156, 157;

Guerin, p. 170;

Bill, p. 19, par. 30;

Ans., p. 38, par. 24.

ARGUMENT.

The substantial relief asked by the complainant against the defendants is, that they may be prevented, in any action at law on these bonds, from setting up and taking advantage of the circumstance that they are without seals.

The granting of that relief, in the form found in the decree appealed from, does not prejudice the defendants in making any other defence they may have to these bonds, when called upon to pay them. We are not, *now* and *here*, asking for judgment upon them against the township.

The question, then, is not, whether or not the defendants have any good defence to these bonds in an action at law upon them; but simply whether, under the circumstances, it is equitable and just that they should be permitted to set up as a defence to them in such action that they are unsealed.

In *Draper vs. Springport*, 104 U. S., 501, where, owing to the prevalence of the New York code, this question could be and was raised in the action at law, the Court held, under circumstances much like those in this case, and contrary to the ruling below, that such defence could not be set up, and reversed on that ground, leaving the defendants at liberty to set up any other defence which they might have.

That case seems to rule this; but as other matters were urged below and may again be urged here, I will consider them.

They may be classed as follows:

FIRST.

That the *first* set of consent-papers was not signed by a majority of the tax-payers "appearing on the last assess-" ment roll," and this defect was not cured by the *second* set.

SECOND.

That the bonds were delivered to the Railroad Company in exchange for, or payment of the subscription for stock in the railroad, instead of being sold for cash at not less than *par*, as directed by the Act.

Both the foregoing, if defences at all, are defences at law to an action on the bonds.

THIRD.

That we took the bonds with full notice of the want of seals, and are thereby chargeable with notice of other defences, and deprived of any standing in equity.

FOURTH.

That we are asking the Court to remedy a defect in the execution of a statutory power, which it is contended equity never does.

I.

As to the consent-papers.

1. The first set of consent-papers (composed of three papers, identical in substance, fastened together) are dated July 17, 29 and 25, 1868, respectively, and the affidavits thereon were all made September 19, 1868. The papers were filed in the County Clerk's office, December 17, 1868.

The genuineness of the signatures is attested by the affidavits of the comissioners who witnessed them; and the affidavit of McMurtry, the Assessor, thereto annexed is a complete fulfillment of the requirements of the bonding act.

The second section of the bonding act requires the consent-papers to be signed by a majority, etc., "*ap-*
"*pearing upon the last assessment roll of such township.*"

The Act was passed April 9, 1868, and the "*last assess-*
"*ment roll*" at that date was that of 1867. It was also

the "*last assessment roll*" at the time the canvass of tax-payers was made, viz., in August, 1868.

The tax-law, in force at that time, is found in Nixon's Digest, 4 Ed., 1868, and so much of it as bears on this question is printed and annexed hereto. The book containing the assessment roll is there called the "*duplicate*," and is made and perfected as follows:

Between May 20th and August 20th, by act of 1846 (par. 1), and between May 20th and the third Monday in August, by act of 1867 (par. 116), the assessor makes a list of tax-payers and rateables with valuations for his township in a book which he calls his *field-book* (because usually done in pencil). This book he copies in ink and lays before the township committee (the governing body of the township, composed in 1868 of five persons, now of three) for revision.

The committee is allowed until the last Saturday in August for that purpose (par. 115-118, Act of 1867). In that revision, new names may be added and valuations changed. From this book, after revision, the assessor makes a book of abstracts which he lays before a meeting of all the assessors of the county (there being one for each township), held at the Court House on the first Monday in September (par. 3, 94, 95) for the purpose of fixing the quota of County and State tax to be paid by each township. The assessors so convened are called the *Board of Assessors*. This Board may, for that purpose, increase the total valuation of any township, but may not alter the valuation for individuals as fixed by the assessors. After the quota has been so fixed by the Board of Assessors of the county, the assessor of the township proceeds to levy the same upon the persons assessed, according to the amount of their respective valuations (par. 6), and, fifteen days after the meeting of the Board of Assessors, delivers a *duplicate* thereof to the township collector (par. 5).

Immediately after receiving the duplicate, the collector again lays it before the township committee (par. 103, 104), who again revise the same and take proceedings to have any omissions or erroneous under-valuations corrected before the Commissioners of Appeals, who

meet for that purpose on the fourth Tuesday of November. In the meantime the collector gives notice to all tax-payers of their assessments (par. 11, 110), and each tax-payer may appeal from his assessment to the Commissioners of Appeals (par. 8). No tax-list or duplicate can be said to be complete until after the meeting of the Commissioners of Appeals on the fourth Tuesday of November in each year.

It thus appears that the construction put upon the bonding act by the bonding Commissioners and Assessor was correct. At the time of making this canvass, August 1868, the "*last assessment roll*" was the duplicate of 1867.

It also appears by the Tax Act that the township assessment roll was not a public record kept in a public place where all persons who desired could examine it. No provision for such inspection is found in the Act. There is not even a provision for handing it over to successors in office.

It is plain the bonding act contemplated that persons desiring to purchase should look at and rely upon the consent-papers filed in the County Clerk's office, and that they, with the affidavits annexed, should be conclusive evidence of the facts sworn to. The act says "Such consent and affidavit shall be filed," etc., "and the same or "a certified copy thereof shall be evidence of the facts "therein contained and received as evidence in every "Court in this State," etc. The act does not, like some of the New York Acts, say "*prima facie evidence*," but "*shall be evidence.*" I submit that, considering the aim and object of the act, it is plain the legislative intent was to make them conclusive evidence in favor of bondholders.

To make them *prima facia* evidence only and permit the township to contradict them in every suit on a bond, would make them a mockery and not a protection.

The word "*evidence*" is used in the sense of "PROOF."

Of course, in a direct proceeding to set aside or control the action of the Commissioners, such as that in *Lane vs. Schomp*, 5 C. E. G., N. J. Rep., 82, and in *People vs.*

Allen, 52 N. Y., 538, the affidavit is not conclusive.

In this case Moses A. Brookfield, a Morristown broker, sent to Somervile and procured a copy of the first set of consent-papers, and purchased and sold bonds on the strength of them, and several of our bonds came through him.

Brookfield, p. 113;
Forsyth, p. 109-111;
Holmes, p. 81;
Mulford, p. 112;
Stone, p. 85.
Ball, p. 70.

I submit the consent-papers are conclusive and bind the township.

2. The commissioners and assessors were the officers of the township upon whom the law cast the duty of ascertaining and determining the question of fact, whether or not the requisite majority had consented; their action is conclusive and estops the corporation.

This Court so held in construing a similar statute in

Town of Venice vs. Murdock, 92 U. S., 494, at 497-500.

The language of the Court there applies with equal force here.

See also

Lynde vs. County, 16 Wal., 6, at p. 13;
Com'rs vs. January, 94 U. S., 202, at p. 205;
Rock Creek vs. Strong, 96 U. S., 271, at p. 277.

3. The additional consents and affidavits filed Sept. 1, 1869, did, in connection with those filed in December, 1868, make up the requisite majority.

This last set is printed, commencing on p. 241, l. 20, of the record, and ending at p. 247, l. 20; and a copy is also annexed hereto in a more intelligible shape than that in which the record presents it. The assessor's affidavit is on p. 246-7 of the record and refers to the *consents* of the previous year.

No attempt was made before the examiner to contradict it.

On our part, we offered evidence which proved conclusively that the two sets of consent-papers did, collectively, comprise the requisite majority of real-property owners and tax-payers on the duplicate or assessment roll of 1868, as well as of 1867.

McMurtry, p. 120-122;

Exhibit C 52, p. 82-86 of record in Morrison's case, No. 97.

(By stipulation, the evidence in each case is to be used in the other, p. 77.)

The total amount of real estate assessed in 1868 to signers of the consent was		$ 742,205
Total real estate of township,		1,327,765
Total names on list, 1868		814
Total polls, after deducting names appearing more than once		551
Total number signing the consents for both years,	416	
Deducting those not on the list of 1868,	33	
There remain, signing,		383

Upon this point no question was made in the Court below.

These additional consents supplied all defects in the first set, and were filed before any of the bonds here in suit were purchased, and before the registry of the bulk of the bonds.

Bonds amounting to $25,400 were registered January 18, 1868. The rest were registered after September 1, 1869.

The supplemental consents were not irregular.

Supervisors vs. Galbraith, 99 U. S., 214, 218.

4. The recitals in the bonds estop the township.

The words are, "This bond * * * is issued on the faith and credit of said township *in pursuance of* an act" etc. p. 13.

The force of the words, "*in pursuance of*," is, the re-

quirements of the act have been *followed* and *observed*. Such was the interpretation put upon them in

Moran vs. Com'rs., 2 Black, 722, at p. 726, 731;

Harter vs. Kernochan, 103 U. S., 562, at p. 563, 569, 570;

Pompton vs. Cooper Union, 101 U. S., 196, at p. 204. This last case is precisely in point. See also

Knox vs. Aspinwall, 21 How., 539;

Coloma vs. Eaves, 92 U. S., 484 at p. 490;

Venice vs. Murdoch, 92 U. S., 494, 495;

Bonham vs. Needles, 103 U. S., 648 at p. 650.

All the purchasers of these bonds are *bona fide* purchasers; that is, they paid the market price which, at the time, was a full price for such bonds; they had no notice of this infirmity (if it be one), and they bought in good faith.

5. The defendant corporation is estopped by its silent acquiescence in the conduct of its agents.

All their conduct was open and notorious.

McMurtry, p. 99.

The first canvass of tax-payers was made in the Summer of 1868 and the second in the Summer of 1869. One-fifth only of the bonds were registered before September 1869, and that one-fifth in January of 1869. Ample opportunity was given to take action to restrain the commissioners, and such action was taken by the tax-payers of the adjoining township of Bedminster.

Ans. of Stelle and Guerin, p. 34, par. 7;

Evidence of *Stelle*, p. 149 bottom, 150 top;

" " *Guerin*, p. 166, bottom;

" " *McMurtry*, p. 99, near top.

The commissioners were as much the agents of the corporation as if they had been elected instead of appointed.

The municipality is the creature of the Legislature and it has power, without regard to the will of the people, to provide how its officers and agents shall be chosen.

1 Dil. Mun. Cor., 3 Ed., Secs. 37 and 44;
State vs. Seymour, 6 Vroom, N. J., p. 47.

The case was this:

By a special act of the Legislature passed in 1868, certain persons therein named were appointed commissioners to lay out certain streets in Bergen Co., and to perform the duties of "surveyors of the highway," which by the general township law are elected by the people. The power of the Legislature to do this was questioned. The Court says:

"There are no reasons assigned that are sufficient "against the power of the Legislature to appoint these "commissioners, with the duties and authority given "them. They, in effect, take the places of surveyors of "the highways and overseers of roads, and map and lay "down many roads at a time, instead of one, in anticipa- "tion of future public necessity. It is, in principle, the "ordinary delegation of legislative authority to choose "public officers, who do these necessary and subordinate "acts of administration. They are municipal officers se- "lected by the Legislature instead of the people, which, "however questionable the method may be in policy, is "frequently exercised, and can hardly be doubted within "certain necessary limitations."

Our Supreme Court has held these very commissioners to be the agents of the township.

Morison vs. Bernards, 7 Vroom, p. 219.

The distinction between general and special agents in mercantile law does not apply to municipal officers. They are all special agents in one sense, because their powers and duties are all defined by statute. They do not represent and stand in the place of the municipality in the sense in which a mercantile agent does his principal. At the same time, they are general agents within the scope of their special duties, and their acts, done within that scope and apparently in accordance with the law defining their duties, bind the municipality.

The corporation consists of every man, woman and child in it, and not of what may be termed its regular organization of officers.

1 Dillon Mun. Cor., 2 Ed., Sec. 9, p. 93, where he says:

"The corporation is the artificial body created by the "law, and not the officers, since these are, from the lowest "up to the councilmen or mayor, the mere ministers of "the corporation. Even the council, or other legislative "or governing body, constitutes, as it has been well re- "marked, neither *the* corporation, nor in themselves *a* "corporation."

The N. J. Act creating these corporations is as follows (Revision of 1877, p. 1,191:)

"1. That the inhabitants of each of the several town- "ships, precincts and wards of this State, hereinafter "mentioned, be and they are hereby continued a body "politic and corporate in law, as heretofore constituted "and established, by the name of 'the inhabitants of the "'township of ———, in the county of ———,' as the "case may be, that is to say:"

"(5) The inhabitants of the township of Bridgewater, "Bedminster, *Bernards*, Hillsborough, Montgomery, "(otherwise called the western precinct) Warren, Frank- "lin (otherwise called the eastern precinct) and Branch- "burgh, in the county of Somerset."

Nevertheless, it is well settled that this body of people may, in their corporate capacity, be estopped by acquiesence.

Dillon on Mun. Bonds, sec. 23;

2 Dan. Neg. Inst., sec. 1,545–7;

Rogers v. Burlington, 3 Wal. 654 at p. 667.

Justice Clifford, says:

"Perfect acquiesence in the action of the officers of "the city seems to have been manifested by the defend- "ants until the demand was made for the payment of in- "terest. *They never attempted to enjoin the proceeding* "*but suffered the bonds to be issued and delivered to the* "*company*, and when that was done it was too late to ob- "ject that the power conferred in the charter had not "been properly executed."

Justice Swayne, in *Pompton v. Cooper Union*, 101 U. S., at p. 201, says:

"Up to that time it does not appear that the validity

"of the township bonds was questioned by any one. "There seems to have been entire acquiesence on the part "of all concerned, including the township authorities."

County of Ray v. Vansycle, 96 U. S. 675, at p. 688, the Court says:

"Upon the clearest principles of justice, the tax-payers "of Ray county are concluded by the acts of their offi- "cial agents, and by their own failure, either intention- "ally or from neglect, to assert, by appropriate proceed- "ings, their legal right (if any they ever had) to prevent "the transfer of their original subscription to the com- "pany, which, by the construction of its road, gave them "greater railroad facilities, and at no greater cost, than "they could have obtained under the contract with the "North Missouri Railroad Company."

State v. Van Horne, 7 Ohio, 327;

Shoemaker v. Goshen, 14 Ohio, 569.

The language of the Court in *State v. Van Horne* is peculiarly apt to this case.

Commonwealth v. Com'rs of Allegheny, 37 Pa. St., 240.

II.

The exchange of bonds for stock.

1. The bonding act in this respect is *directory* merely, and not *mandatory*, and the commissioners, having by authority of the act and the consent of the taxpayers subscribed for the stock and incurred the obligations of such subscriptions, could as well discharge the same by a delivery of the bonds of the Railroad Company, at their par value, as by an actual borrowing of the money and delivery of the cash to the Railroad Company.

Such has been the repeated and unvarying ruling of this Court up to the case of *Scipio v. Wright*, 101 U. S. 665.

Meyer v. Muscatine, 1 Wall. 384.

The legislative authority there, as here, was (1 Wall. 386), "*To borrow money for any object in its discretion.*"

There was, in that case, no express authority to subscribe for stock in a railroad, while here there is such authority. The vote of the citizens there was in favor of an "actual borrowing," p. 387. The bonds were nevertheless delivered directly to the R. R. in payment for stock subscribed. The circumstance was set up as a defence, and the Court said of it (p. 392):

"The city was authorized to issue the bonds in order "to borrow money to pay for the stock. If the company "chose to receive the bonds in payment for the stock, "retaining a lien on the stock until the bonds were paid, "there was no legal obstacle in the way of their doing so. "The object of issuing the bonds was thus accomplished, "and no injury was done to those who were to pay them. "It is neither averred in the answer, nor claimed in the "argument, that the railroad company took them at less "than their face. *It does not appear that anyone ob-"jected then, and no one can object now.* After the "bonds passed into the hands of the railroad company, "the company was at liberty to sell them on such terms "as it might deem proper."

This ruling was approved and followed in

Rogers v. Burlington, 3 Wall. 654.

There the legislative authority was to *borrow money* only, and the action of the city council and vote of

the citizens was in favor of a "*loan of bonds to the railroad*," and the bonds were so expressed on their face, thereby giving notice to all purchasers. A lack of power in the corporation to loan its bonds was set up in defence of an action upon them, and it was attempted to distinguish the case from previous ones on that ground. But the defence was overruled and the validity of the bonds sustained (p. 666, 667).

These cases were decided and published as part of the law of the land, before the bonds here in suit were negotiated, and, presumably, purchasers relied upon this Court to stand by its rulings in a matter of such public interest.

Then we have

Converse v. Fort Scott, 92 U. S., p. 503.

There the city had authority to issue its bonds for $25,000 for the purpose only of procuring the right of way and depot grounds for the R. R. in the city. Instead of procuring the right of way and depot grounds, and paying for them, the city authorities, in lieu thereof, delivered the bonds directly to the railroad. The validity of the bonds was upheld.

In each of these cases the Court went further to uphold the bonds than it is necessary to do here.

In *Scipio v. Wright*, 101 U. S., in yielding to the effect of the decisions of the State Court, this Court (p. 674) says: "Neither Howland, therefore, nor Wright, the "purchaser from him, stands in the position of a *bona* "*fide* purchaser without notice of the exchange of the "bonds for stock. *Had either of them been such a pur-* "*chaser, the plaintiff's right to recover could not be gain-* "*said*. But the question now is, whether the fact that the "bonds were not issued for borrowed money, but were "exchanged for stock of the railroad company, is a de- "fence for the town against a holder who, when he pur- "chased, had notice of the manner of their issue. Were "the question an open one, it would seem that it ought "not to be a defence. It might be regarded as a fair "presumption that the bonds were sold to Howland for "not less than their par value, and that the company re- "ceived their full amount in money; or the transaction

" might be regarded as practically a borrowing of the " money by the town through the agency of the railroad " company. So far as discharging the debt of the town " for its stock subscription is concerned, and so far as " relates to obtaining a full-paid certificate, the transaction " is, in legal effect, the same as if the money had been " borrowed by the town directly and paid over to the " company."

There has been no decision in New Jersey on the point; and while the Courts of New York have held the irregularity fatal, those in Pennsylvania and Ohio have been in accord with the rulings of this Court.

Middleton vs. Com'rs., 37 Pa. Rep., 237;

Shoemaker v. Goshen Township, 14 Ohio St. Rep. 569.

2. The "*recitals*" in the bonds and the "*acquiescence*" of the inhabitants are each a complete answer to this defence as well as to that of want of sufficient consents.

Purchasers in the market would have nothing to excite their suspicion of such a defence as this.

3. The Complainant is a *bona fide* holder for value, without notice of this defect. As to those of the bonds of which he is a mere bearer and trustee for other parties, he stands in their position on the principle that a purchaser with notice from one without notice is thereby accounted a purchaser without notice.

The history of each bond is given in the evidence.

Most of them were purchased in the market from brokers or dealers in such securities. Only in one or two instances is there the least glimpse of any notice of the fact that the direction of the statute in the respect under consideration had not been complied with.

The language of the Court in *Scipio v. Wright*, 101 U. S., at p. 674, as to *bona fide* holders applies.

This very point was ruled in *Montclair vs. Ramsdell*, Oct. Term, 1883, published in 2 Sup. Ct. Reporter, p. 391. At p. 402, the Court says: " When the instruction in " question was asked, the proof was that the bonds had " been issued by the commissioners, *and exchanged with* " *the railroad company for a like amount of the com-* " *pany's income bonds. That exchange was a substantial* " *compliance with the statute.*"

The Montclair act was, in this respect, precisely like our act, the only difference being that the Montclair act authorized investment of the proceeds of the loan in the *bonds* of the railway, while our act authorized investment in the *stocks* of the railroad. See Secs. 2 and 3 of the Montclair act, p. 392, 393, 2 Sup. Ct. Reporter.

III.

That notice of the want of seals deprives us of our equity.

We are, of course, chargeable with notice of the defect because it is patent, but, in point of fact, it was not observed by anybody.

I submit, however, that notice of this defect is not notice of any defence not connected with it.

The defect itself is a defect in completeness only; it indicates a lack of completeness. The only thought or suspicion which it would excite, if observed, would be—This bond was never finished. The next thought would be—was this failure to finish intentional or inadvertent merely? In answer, the inquirer would find the main thing—the signatures of the commissioners, also the clerks certificate of registry. The kernel is present; the shell—the seal—only is lacking. He would reason that it could not be possible that the parties did not suppose they were putting out a complete instrument. And these indications do not mislead.

The proof is clear that they were issued as complete instruments. The want of seals was a mere oversight.

The only meritorious defence of which a lack of seals could possibly be held to be a notice, was that the bonds had never been delivered, but had been obtained by *fraud or felony* from the commissioners without their knowledge or consent, and before they were complete. But the purchaser, observing this defect and having his suspicions actually aroused on this subject, would have naturally reasoned: If these parties did not intend to complete the bonds, why did they sign them, and, if stolen or obtained by *fraud*, how came the certificate of registry on them? *I will take the risk of that.*

If a purchaser had enquired of the commissioners, what would he have learned? Simply that the defect was a mere oversight.

It is true he might possibly, by enquiring further, have learned more, but there is no certainty that he would,

and he was not put on enquiry as to any other matter. In other words—the mere fact that a purchaser was for a single purpose brought into personal contact with the commissioners or any other officer of the town, did not charge him with notice of anything that he might have learned by enquiring as to matters not connected with that purpose. And the moment he learned that the want of seals was an unintentional omission, and that the bonds had been issued intentionally, he would have had a right to rely upon the general authority under the act of the commissioners as the agents of the township, and upon the recitals in the bond that they were issued in pursuance of the act.

These bonds, as to all matters of formal defects, stand on the same footing as commercial paper.

Dan. Neg. Inst., Sec. 148.

There is a broad distinction between notice implied from defects of this character and that arising from the dishonor of a promissory note or bill of exchange.

The fact that a bill or note lacks a word or two, does not import an intention on the part of the maker or acceptor not to pay it at maturity, provided the substance of the instrument is found over his signature.

On this principle it has always been held that a note or acceptance may be signed in blank, and put on the market in such manner as to authorize the holder to fill the blanks.

But the failure to pay at maturity has always been held as notice to all the world that the maker or acceptor did not intend to pay at all and might have a defence on the merits.

Dan. Neg. Inst., Sec. 725 a, 782.

In short, the seals were not of the essence of the bond and were not relied upon to attest their genuineness. The township had no seal. The commissioners had none with any distinct impression.

Plain paper seals would have answered the requirements of the statute which says "the Commissioners shall execute bonds under *their* hands and seals"—sec. 2. The

thing here relied upon to attest the genuineness of the bonds, was the *signature of the Commissioners*, which could be made by nobody but themselves, while the seals could be affixed by anybody. To the signature of the commisssoners the act added the *certificate of registry* in the County Clerk's office, under his official seal.

That the seals were not of the essence of the affair was taken for granted in

Antonio v. Mehaffy, 96 U. S., 312 at p. 315, and directly ruled in

Draper v. Springport, 104 U. S., p. 501.

In the latter case the language of the bonding act (p. 502) as to the seals, is precisely the same as in the N. J. act, and its general provisions are similar. The language of the Court (p. 503–504,) covers and controls this case, and were our form of procedure like that of New York, we would not have been compelled to go into equity.

IV.

That we are asking the court to supply a defect in the execution of a statutory power, which the Court will not do.

My answer is

1. This is not, properly speaking, a case of the execution of a statutory power.

2. If it be such, still it is a case where equity will supply the defect.

It must be borne in mind that it is not necessary that there should be an actual reformation of these bonds, and the decree appealed from does not provide for it—but only that the defendant be restrained from setting up such defect, and that the bonds be deemed and held for all purposes and at all times, as if sealed.

The opinion of the Court below on this point, printed in Morison's case (p. 29–38), needs no support; but I will add some suggestions made in the Court below.

The general power and duty of a Court of equity to grant such relief in a proper case, is not denied. Nor is it pretended that complt. has done or omitted to do any thing, or taken any position, which should close the door of a Court of equity in his face. Nor has the defendant presented any equitable shield or defense to the complainant's complaint.

Complainant has done or omitted to do nothing whereby deft. has been injured.

The failure to discover the defect in the bonds was the result of an innocent oversight common to the commissioners who issued, to all the brokers who dealt in, and to the hundreds of honest investors who purchased, these securities; and worked no injury to the defts.

It is evident that had the defect been discovered while the bonds were being put on the market, it would have been cured at once by the voluntary act of the commissioners. They both swore that it was their intention to issue perfect bonds, and that they thought they were so doing, and that the matter of sealing was not thought of by anybody.

No case can be found where an oversight of this kind, common to both parties, and working no injury to the party sought to be charged, has been successfully set up as a defense in equity.

The contention is that the rule governing Courts of equity in such cases is that, while they will in proper cases supply defects in the execution of powers *created by a party*, they will invariably deny such aid in the execution of those *created by a statute.*

My answer to this contention is:—

First. The rule so contended for is laid down too broadly, and is not supported by authority or reason. On the contrary, Courts of equity, where not restrained by positive enactment, will aid in supplying defects in the execution of statutory powers upon equitable principles as readily as of those having a different origin.

Second. The case in hand does not present the instance of a statutory power, but, if in any sense a power, it is one created by the corporation deft. itself, acting, as in all matters it must act, by statutory authority.

Third. This is a simple case of a coporation acting through its duly authorized agents, and the learning and doctrine of powers do not apply.

Fourth. If the case should be held to be one of the execution of a strict statutory power, yet the deft. is not in a position to invoke in this Court the rule in question in aid of its defense to the prayer for relief.

Let us make a comparison of the transaction and the parties to it now before the Court, with that of the exercise of a *power* in the cases in which the rule in question has been applied.

First. The bonds in question are the bonds of the defendant corporation, and not the bonds of the commissioners. The act of the Legislature (sec. 2) declares that it shall be lawful "for the said commissioners to borrow "on the faith and credit of their respective townships, "such sum of money," etc., * * "and to execute bonds "therefor," * * "but no such debt shall be contracted

"or bonds issued by said commissioners *of or for either of* "*said townships*, until the written consent," etc.; and the subsequent sections and the whole context show that such was the intention of the act. And such was the distinct and direct ruling of the Sup. Ct. of New Jersey, in *Morrison v. Bernards*, 7 Vroom, 219.

Second. In issuing these bonds, the commissioners acted as the officers and *agents* of the deft. corporation. They were not the Commissioners of the Court nor of the State, but of the corporation known by its legislative appellation of "The Inhabitants of the township of Bernards, in the County of Somerset."

The language of the act (sec. 1) is: "*to be Commissioners for such township* to carry into effect," etc. By sec. 9 they are to execute bonds to their respective townships for faithful performance of their duty, to be approved by the township committee. By sec. 11 their compensation is to be paid by the township. By sec. 12 they are to constitute a board to act for their township by a majority quorum, and vote. By sec. 4 they are to make an annual report, etc., to the township committees. The act nowhere provides any accountability on their part to any authority except the township.

The fact that they are appointed by the Court, and not elected by the people, does not alter their character in this respect. It is competent for the legislature to provide for the choice of officers and agents of municipal corporations in other modes than that of election by the people. Nothing in our New Jersey Constitution prevents it. Supra p. 16.

In this instance the corporation consists of every man, woman and child within its limits, and not of the persons who at the moment may constitute its governing body.

The power of the legislature to alter and amend the organic laws of municipalities is undisputed.

1 Dill. Mun. Cor., 3d Ed., sec. 54 et seq., sec. 85.

There is, then, no difficulty in holding the Commissioners to be officers of the township within the limited sphere of their duties, in the same sense that the regular township committee are its officers, whose duties in their

turn are not less limited and exclusively statutory than those of the Commissioners.

Third. The consideration for these bonds went to the Township corporation, in strict accordance with the design of the act, and it derived whatever benefit was derived from it. The capital stock was issued to the corporation, the railroad was built through the township, and the value of the real estate of the inhabitants of the township was (as shown by the evidence of the assessor) increased thereby.

This makes a complete case of agency—an agency, indeed, restricted in its character and limited by statute. But that is the character of all such agencies. All the ordinary officers of municipalities are restricted in their powers by statute—in fact, have none except such as are conferred by statute. Yet, while acting within the scope of the authority conferred upon them by the statute, they are acting as the agents of the municipality.

This is common learning.

The bonds held by the complt. are the bonds of the deft. corporation, executed—imperfectly indeed, but still executed and intended to be fully executed—by means of agents, imposed upon the corporation under statutory provisions, but still the agents of the deft., for a consideration paid to and received by deft.

Now compare this state of things with that of an ordinary *power* to which the the learning and rule invoked below by the Township and now under consideration, has been applied.

There we find ordinarily,—*first*, a *creator* or *donor* of the power; *second*, a *donee* of the power, or person who has exercised it; *third*, the person to whom the estate is conveyed or devised *subject to the power;* and *fourth*, the person in whose favor the power has been exercised; or, in the case of statutory power, we have the supreme power of the State creating the power, enabling, e. g., a tenant in tail or for life to make leases extending beyond his life, or a sheriff or administrator to sell land to pay

debts, or a guardian of an infant or of a lunatic to sell land to support the infant or lunatic.

In none of these cases is the person exercising the power in any sense the agent of the owner of the title against whom the power is exercised.

The donee of a power created by will or deed is in no sense the agent of the owner of the fee, who holds the lands subject to the power.

The tenant in tail or for life is in no sense the agent of his successor in tail or remainderman.

The sheriff is in no sense the agent of the defendant in execution.

The administrator is not the agent of the heir at law.

And even the guardian of the infant or lunatic is not, strictly speaking, the agent of his ward.

Both of the latter persons—administrator and guardian—are the officers of the Court, deriving no authority from the heir or ward.

In none of the cases of powers to make leases does any consideration inure directly to the benefit of the owners of the estate, the title to which is sought to be divested.

But suppose now that a guardian in infancy or lunacy sells his ward's land by order of court for a fair price to a purchaser in good faith, who pays the price; and it is expended by the guardian in the support and maintenance of his ward, and, through an inadvertance, the deed of conveyance is not sealed. Would any court of equity permit the infant or lunatic, after having enjoyed the benefit of the price, to set up the want of a seal to the deed in an action of ejectment brought to enforce the deed? The utmost benefit equity would permit the party to take of such a defect, under such circumstances, would be to treat the defective deed as a mortgage for the amount of money paid, and let him in to redeem.

Justice Story, in *Bright v. Boyd*, 1 Story, p. 478 (a case relied upon below by the other side), held that the

same doctrine would apply to the case of a party claiming under a defective administrator's sale. Bear in mind that the defect in that case was not, as here, a mere want of a seal in the deed, but was fundamental to the extent of *actual want of power;* as if the Commissioners in the case before the Court had acted upon informal consent-papers, or without any consent-papers.

At p. 498, 1 Story *(Bright v. Boyd)*, Justice Story says: "Now, in the present case, it cannot be overlooked "that the lands of the testator, now in controversy, were "sold for the payment of his just debts, under the au- "thority of law, although the authority was not regularly "executed by the administrator in his mode of sale, by "a non-compliance with one of the prerequisites. It was "not, therefore, in a just sense, a tortious sale; and the "proceeds thereof, paid by the purchaser, have gone to "discharge the debts of the testator, and so far the lands "in the hands of the defendant (Boyd) have been relieved "from a charge, to which they were liable by law. So "that he is now enjoying the lands, free from a charge "which, in conscience and equity, he and he only, "and not the purchaser, ought to bear. To the extent "of the charge, from which he has been thus relieved by "the purchaser, it seems to me that the plaintiff, claiming "under the purchaser, is entitled to reimbursement, in "order to avoid a circuity of action, to get back the "money from the administrator, and thus subject the "lands to a new sale, or, at least, in his favor, in equity "to the old charge. I confess myself to be unwilling to "resort to such a circuity, in order to do justice, where "upon the principles of equity the merits of the case can "be reached by affecting the lands directly with a charge, "to which they are *ex aequo et bono*, in the hands of the "present defendant, clearly liable."

And this view was adopted and applied to similar facts in *Springs v. Harven*, 3 Jones' Eq. (N. C.) 96.

Take the case of a sheriff's sale of land. Suppose he sells half a tract and thereby raises money enough to pay the judgment and thereby relieves the other half from its lien; would a Court of Equity permit the defendant in

execution, owner of the land levied upon, to set up a want of a seal on the sheriff's deed to defeat the purchaser's title? Would not the utmost equity to which the defendant in execution would be entitled, be simply the right to redeem the land sold from the lien of the judgment? He could not be permitted in the same breath to say that the judgment was paid, and that the purchaser who paid that judgment got no title from the sheriff.

I hold it therefore to be clear that in the case of any sale by an officer of the Court, under either a judgment of the Court or an order of sale by it lawfully made, where there is no informality or lack of merit in the order or judgment, or in the proceedings, and the sale has taken place and money has been paid in such manner that by a proper deed the title would pass; there a Court of Equity would not permit the purchaser to lose the benefit of his purchase on account of a mere oversight resulting in the want of a seal on the deed; but would compel the administrator or guardian, or other officer of the Court, to complete and perfect the deed.

An officer of the Court is liable just as an individual to be compelled by a Court of Equity to specifically perform his contracts made in his official capacity.

The case just supposed might be changed by the interposition of the element of a *bona fide* purchaser from, or judgment creditor of, the person whose title is to be divested by the defective deed, and that additional element may have existed in the case of *Moreau v. Detchemendy*, cited below from 18 Missouri; and there may have been such a disparity between the value of the land sold and price paid as to raise a counter equity, and reduce the defective deed to an equitable mortgage.

McBryde v. Wilkinson, 29 Ala., 662, was a case of a defective acknowledgment by a married woman of the execution of a deed of conveyance of her husband's lands, and held simply that such defective acknowledgment could not be remedied in equity, the wife having received none of the consideration. This case stands, of course, on its own grounds.

And these are all the American cases which the indus-

try of counsel below was able to produce in support of his position.

On the other hand, Chancellor Kent, in *De Riemer v. Cantillon*, 4 J. C., 85, did reform a sheriff's deed, as against the defendants in the execution, by inserting in it lands omitted by mistake, and decreed the defendants to release to the purchaser at the sheriff's sale.

And the U.S.Circuit Court for the district of Connecticut, in *Segee vs. Thomas*, 3 Blatchford, C. C. R., 11, upheld a defective deed of land of a minor, made by a guardian appointed for that purpose, on a valid order for sale, and enjoined the minor from taking advantage of the defect, and compelled him to convey to the purchaser in aid of the defective conveyance, on the ground that the minor had received indirectly, through her general guardian, the proceeds of the sale, and had stood by while the purchaser made improvements.

Here the defendant corporation, the township, received for these bonds all the consideration, which the law contemplated it should receive. Moreover, it is estopped by its passive acquiescence in the acts of its officers, from setting up any mere irregularity in the issue of these bonds. How, then, can the Court stop short and say that this defendant is not also estopped from setting up so trivial, unsubstantial and innocuous a matter in defence as the want of seals on the bonds?

The language and reasoning of the Judges in the cases above cited (p. 17, 18), apply with peculiar aptness, and, if possible, greater force to the case in hand. The argument from those cases to this is *a fortiori*.

Let us look for a moment at the English authorities. They are collected by Justice Story in 1 Eq. Jur., secs. 96 and 177. His text is taken mainly from the American notes to the Phila. edition of 1820 of Fonblanque's Equity, to which he refers. Mr. Fonblanque, Book 1, chap. 1, sec. 7, in his text says: "Equity, therefore, will "supply any defects of circumstances in conveyances; as "of livery-seisin in the passing of a freehold, or of the "surrender of a copy-hold, or the like. Also all mispris-

"ons in deeds, as of the names of the parties, or the sum "in a bond. And an award, or charter-party, though "void or defective at law, may find relief here. Nor "shall any fiction of the common law, as the extinguish- "ment of a covenant by marriage, prevent the interpo- "sition of this Court, *for equity regards not the outward "form, but the inward substance and essence of the mat- "ter*, which is the agreement of the parties upon a good "and valuable consideration, and where *the persons in- "terested fully intend to contract a perfect obligation, "though by mistake or accident, they omit the set form "of law*."

Here is added in a note:

"This remedial power of courts of equity does not ex- "tend to the supplying of any circumstance, for the "want of which *the legislature hath declared the instru- "ment to be void*. See *Hibbert v. Rolleston*, 3 Bro. "Ch. Rep., 571; *Williams v. D. of Bolton*, 2 Ves. jun., "138; *Ex parte Bulteel*, 2 Cox's Rep., 243; *Astor v. "Wells*, 4 Wheaton, 466. (But query, if by accident or "fraud the party be prevented from completing the in- "strument as prescribed by law.)"

And again, Book 1, ch 4, sec 25, Mr. Fonblanque says, speaking of balancing of equities:

"Accident or an impossibility of complying with the "circumstances, since it would be unconscionable in the "remainder-man to take advantage of these, provided he "does all he can. And so in other cases of powers, *as to "make leases, equity will relieve the defective execution "of them, where there is any fraud or accident, or a val- "uable consideration.*

And a note at this point, also referred to by Justice Story, is as follows:

"This must be understood of such leases as are not "derived under powers limited in their nature to a par- "ticular mode of execution; for, in the construction of "powers originally in their nature legal, courts of equity "must follow the law, be the consideration ever so meri- "torious; *for instance, powers by tenant in tail to make "leases under the statute, if not executed in the requisite*

"*form, no consideration, however meritorious, will avail.*
"So with respect to powers under the civil list act,
"powers under particular family entails, as the case of the
"*Duke of Bolton*, &c., equity can no more relieve from
"them than it can from defects in a common recovery.
"The principle upon which the rule of construction is
"founded in these cases is, *that there is nothing to affect*
"*the conscience of the remainder-man;* per Lord Mans-
"field, *Earl of Darlington v. Pulteney*, Cowp. 267."

Mr. Fonblanque nowhere in his text makes any exception of *statutory powers* as such.

Mr. Maddock, in his treatise on Chancery, Vol. I at p. *55, says:

"Generally, it is a rule, that the *non-execution* of a
"power cannot be supplied, though a *defective execution*
"may. A *non-execution* is where nothing is done; a *de-*
"*fective* execution is where the power has not been exe-
"cuted according to the terms of the power, but where
"it has been intended to execute it, and that intention is
"sufficiently declared, but the act declaring the intention
"is not an execution of the power in the form prescribed;
"and there the defect is supplied in equity."

And again at p. *59:—"It is observable that, accord-
"ing to the opinion of *Lord Mansfield*, Courts of equity
"in the treatment of powers, originally in their nature
"legal, follow the law. 'Powers,' he observed, 'by a
"'tenant in tail, to make leases under the statute, if not
"'executed in the requisite form, will not admit of relief
"'in equity. So, with respect to powers under the Civil
"'List act, powers under particular family entails, equity
"'can no more relieve from them than it can from de-
"'fects in a common recovery. *There is nothing in these*
"'*cases to bind the conscience of the remainder-man.*' In
"later cases, however, it has been holden, that if a lease
"under a power be granted for a *valuable consideration*,
"a Court of equity will relieve against a formal defect in
"the lease."

Hibbert v. Rolleston, 3 Br. Ch'y Rep., 471, was a contest as to the ownership of a ship between the assignees in bankruptcy of the owner, and a mortgagee by way of a

bill of sale, which was defective in not reciting the registry of the ship pursuant to an act of Parliament, which provided that "the certificate of such ship or vessel shall "be truly and accurately recited in words at length in the "bill or other instrument of sale thereof, and that other- "wise *such bill of sale shall be utterly null and void to* "*all intents and purposes.*" Lord Thurlow dismissed the bill of the mortgagee on the ground that the statute declared the bill of sale void to all intents and purposes, and considered the policy of the law as obligatory to an entire avoidance of the transaction.

Ex parte Bulteel, 2 Cox. C. C., was a substantial repetition of *Hibbert v. Rolleston*.

(In the case before the Court the statute not only does not declare the bonds void for want of seals, but does declare them void for want of registry, sec. 14, and the maxim, *expressum facit cessare tacitum*, applies.)

Duke of Bolton v. Williams, 2 Ves. Jr., 138, was a bill of interpleader filed by the Duke to ascertain which of several claimants was entitled to an annuity charged upon his landed estate by his late father in favor of Mrs. Williams, a married woman, who had made several grants of annuities out of it for value to different parties, by deeds which did not conform to the requirements of the statute of 17 Geo. 3, c. 26, sec. 1, as follows: "An act for "the registering the grants of life annuities; and for the "better protection of infants against such grants. 'Where- "'as, the pernicious practice of raising money by the sale "'of life annuities hath of late years greatly increased "'and is much promoted by the secrecy with which such "'transactions are conducted;' be it therefore enacted "by the King's most excellent majesty, by and with the "advice and consent of the lords spiritual and temporal, "and commons, in this present parliament assembled, and "by the authority of the same, that a memorial of every "deed, bond, instrument, or other assurance, whereby an "annuity or rent charge shall, from and after the passing "of this act, be granted for one or more life or lives, or "for any term of years, or greater estate determinable on "one or more life or lives, shall, within twenty days of

"the execution of such deed, bond, instrument, or other "assurance, be inrolled in the High Court of Chancery; "and that every such memorial shall contain the day of "the month, and the year when the deed, bond, instru- "ment, or other assurance bears date, and the name of "all the parties, and for whom any of them are trustees, "and of all the witnesses; and shall set forth the annual "sum or sums to be paid, and the name of the person or "persons for whose life or lives the annuity is granted, "and the consideration or considerations of granting the "same; *otherwise every such deed, bond, instrument or "other assurance, shall be null and void to all intents and "purposes.*"— The claimants under these informal and defective grants were made defendants to the interpleader, and *did not file cross bills asking for reformation.* Lord Loughborough put his judgment as well on the ground that the statute was imperative, as also upon the ground that, as the case was presented, the grantees of Mrs. Williams must stand or fall upon their *legal* rights. At. p. 151 he says: "These bills are bills of interpleader "brought by the Duke of *Bolton*, whose estate is charged "with a legal rent-charge vested in *Law*, as trustee for "Mrs. *Williams*, for her seperate use, by the late Duke. "The subject, therefore, that makes it necessary for the "plaintiff to come here is equitable estate certainly; *but "when that proposition is stated, all that remains is per- "fectly legal. All the questions that were debated are "strictly legal.* The subject matter of the suit is an "equitable interest in the Duke to come here, as being "liable to be called on by Mrs. *Williams*, as *cestuy que "trust*, and also by the persons to whom she has made as- "signments, those persons setting up claims against her, "and each party calling on the Duke not to pay the oth- "er. It is necessary for him in that situation to come "here to determine, whether her assignments are such "as ought to prevent her from receiving that to which "she is otherwise clearly entitled. The position in which "his right puts the parties is, *that as plaintiffs they "must make out their case to entitle themselves to receive "this property.*"

Surely that case is no authority against complt. here.

Earl of Darlington v. Pulteney, Cowper, 260, decides nothing to the present purpose, and is only important on account of the dictum of Lord Mansfield, found at p. 267 and fully quoted in the note to Fonblanque, *supra.*

Curtis v. Perry, 6 Ves., 739 was a case arising under the same act of parliament, under which *Hibbert v. Rolleston* was decided, and was put on the same ground.

Mestaer v. Gillespie, 11 Vesey, 621, was also a case of a bill of sale of a ship, declared void by the act for want of proper registry, and the Lord Chancellor and Master of the Rolls directed an issue to determine whether the registry had been prevented by the fraud of the vendors.

Dixon v. Ewart, 3 Merivale, 322, was another case under the same act, in which the bill of sale was upheld.

Thompson v. Leake, 1 Madd. R., 32, was a case under the same act, which had been amended since the decision in *Hibbert v. Rolleston*, so as to declare all attempted tranfers of ships not in accordance with the act invalid and ineffectual, *both at law and in equity.*

In *Thompson v. Smith*, 1 Mad., 215, the bill of sale was upheld.

These are all the authorities cited by Justice Story, or Mr. Kerr, or in the notes to Fonblanque, and they amount to no more than a dictum of Lord Mansfield, that equity would not aid the defective execution of a power under the statute to lease exercised by a tenant in tail, or for life, as against the remainder-man, "*where there was nothing in the case to bind the conscience of the remainder-man.*" No authority is cited. But Lord Kenyon thought differently in *Doe v. Weller*, 7 D. & E., Term Rep., 480; and a defective execution of a power to lease was aided in equity in *Leach v. Campbell*, Ambler, 740.

I claim, then, that the general proposition stated by the Equity jurists, that equity will not aid the defective execution of a power created by statute, is not sustained by the authorities.

What Lord Mansfield meant by "nothing to bind the "conscience of the remainder-man" was, that there was no consideration received by him nor other circum-

stance in the case which made it inequitable for him to take advantage of the defect.

But here there are such circumstances, and they are of the strongest; they bind the conscience of the defendant and appeal with great force to a court of equity.

I can find no English case which goes the length of holding that equity will not aid the defective execution of a statutory power, where the defect is of the character of that in the present case, and where it has not been forbidden so to do by the statute itself, and where the party against whom the relief was asked had received any consideration from the transaction. I therefore contend that, even if this were the case of a statutory power, complt. should have relief.

But I contend, for reasons before stated, that the learning on the subject of the defective execution of powers does not apply to this case, which is the simple case of principal and agent, or at the most, the execution of a power created by the parties.

The Commissioners were not acting under a power of that class of powers created by the legislature, whose defective execution, it is claimed, equity will not aid. They were, indeed, appointed by permission of, and in the manner provided by, an act of the legislature, which act also pointed out a mode by which the will of the majority of the taxpayers of the township, and the authority of the township to the Commissioners, might be expressed.

The authority of the Commissioners, the *power* under which they acted, is found *in this written consent and direction of the majority.* It came from the township itself, and not from the act. The latter only points out the mode of ascertaining the will of the majority, and permits that will, so expressed, to bind the minority.

The act in question is no more the creation of a *power* than the general township act, or any of the charters of our cities and boroughs. These all point out the mode and methods by which, and the channels in which, the corporate bodies are to act.

If an act should permit a city to borrow money by means of a resolution of its common council, directing its mayor to issue bonds, the authority of the mayor would rest in the resolution of the common council, and not in the act of the legislature. The act of the mayor in making the loan would be the act of the city, done by permission of the legislature. So here, the act of the Commissioners in the premises is the act of the township.

Legislation in regard to popular municipal bodies has two objects. *First*, to limit and define the *matters* in respect to which the majority may rule the minority. *Second*, to point out the *mode* in which that majority, representing the whole, shall speak and act.

Such legislation is in no respect similar to that authorizing a tenant for life to make leases against the interest of the remainder-man, or authorizing a creditor by the aid of legal proceedings, to appropriate the property of his debtor to the payment of his debt.

The legislature points out the mode in which wills and deeds may be executed, but the powers created by the wills and deeds so executed are powers created by the parties and not by the legislature.

So here, the power, if there be one, is found in the authority signed by the majority of the taxpayers, and not in the act of the legislature, which merely pointed out how that majority might act, and declared their act binding.

If, then, the issuing of these bonds be considered the execution of a power (which I deny), still it is a power created by a party, and not by an act of the legislature, and hence it is a power whose defective execution equity will aid.

The authority for supplying defects in the execution of such a power is abundant.

Tollet v. Tollet, 2 P. W., 489;

Cotter v. Layer, 2 P. W., 623.

In *Cockerell v. Cholmeley*, 3 Russ. 565, 1 R. & M., 418, the relief was denied, not on the ground that the donee of the power had attempted to execute *the* power which

he possessed, and in so doing had omitted some formality—as a seal; but on the ground that he had misconstrued the power, made a mistake of law, and executed a power different from that set out in the deed of settlement. Counsel in argument in that case admitted that the defect of a want of some circumstance—*as the want of a seal*—to complete the execution, would have been remedied; and Sir John Leach, in pronouncing judgment, said:

"A court of equity will, in favor of persons standing "in the situation of the plaintiff, supply a defect in the "execution of the power which consists in the want "of some circumstance required in the manner of exe-"cution, *as the want of a seal*, or of a sufficient number "of witnesses, or where it has been exercised by a deed "instead of a will."

The decree was affirmed in the House of Lords with such strong expressions of regret as to lead to an act of Parliament authorizing the court to remedy such cases.

1 Clark and Finelly, 60.

Wadsworth v. Wendell, 5 J. C., 224, was a contest between two *bona fide* purchasers of land, one claiming under a deed first in date and registry, but *without seal*; and the other claiming under a subsequent perfect deed. The unsealed deed, like the bonds herein, concluded with "In witness whereof, I have hereunto set my hand and seal," &c. Chancellor Kent upheld the unsealed deed as an absolute and valid conveyance in equity, and decreed the party claiming under the junior perfect deed to release to him claiming under the prior unsealed deed.

In *The Inhabitants of Montville v. Haughton*, 7 Conn., 543, the bill was filed to correct a mistake in a tax collector's bond, and to compel payment thereof from the tax collector and his sureties. *The mistake was, as here, the want of seals.* It was signed by the obligors and attested thus:—"Signed, sealed and delivered in the presence of," etc. It was agreed by the parties that the instrument should be a sealed instrument, but by mistake or accident no seal was affixed. The cause was elaborately argued, and the Court reformed the bond and granted the

relief prayed for.

Finally, on this part of the case.

It is the duty and province of a Court of Equity to balance the equities of each side.

1 Pom. Eq., Sec. 414–415;

Rice v. Rice, 2 Drew, 73.

The equity on our side is that we are *bona fide* holders, for value paid, of certain negotiable instruments purporting to bind the defendants, put on the market by defendants' agents, acting or appearing to act in pursuance of statutory authority, in which conduct of their agents the defendants knowingly acquiesced and received therefor all the consideration and benefit which the law contemplated.

The alleged irregularities in the procedure of these agents do not make any equity on the side of the defendant, unless it has been injured by them.

The want of seals is, in itself, no equity. In a Court of Equity, a deed is quite as good without as with a seal.

1 Pom. Eq., Secs. 379, 383.

The case discloses no injury whatever which the defendant has sustained by anything that has been done or omitted to be done in the premises, unless it be that the shares of railroad stock, which it received, may have been lessened in value by reason of the R. R. Company's having presumably received only 85 cents on the dollar for the bonds, instead of full par value.

But this is mere inference. The case does not show whether this loss fellon the R. R. Corporation or on the contractors, nor does it show how much, if any, the stock was affected in value thereby. But, granting that an equity in favor of defendant does arise out of that circumstance, it is clearly outweighed and over-borne by the greater equities on the part of complainant.

Moreover, whatever of loss the defendant may have suffered by the sale of the bonds, at less than par, such loss cannot be set up as an equity against the holders of these bonds, because they are in no wise responsible for it. The officers of the township are alone responsible therefor.

FURTHER OBJECTIONS URGED IN APPELLANTS' BRIEF.

Fraud practiced on the tax-payers to procure their signatures.

The evidence does not sustain the charge set up in the answer and dwelt upon in the argument that the signatures of the taxpayers were procured by fraud.

The evidence of Stelle and Guerin, the two living Commissioners, fails to disclose any misrepresentations.

A few witnesses swear that Judge Anderson, since deceased, represented that the township would have a "*mortgage*" or "*lien*" on the road.

But this was such arrant nonsense, and the liability to mistake on the part of the witnesses is so great that it ought not to weigh down the well-established reputation for truth and reliability of Judge Anderson as shown by the evidence. It is remarkable that no witness speaks of any misrepresentations made by the two Commissioners who were alive to face the charge.

But admitting fraud was practiced in getting these signatures, such fraud cannot be set up as against *bona fide* purchasers without notice. To permit such a defence would be to render such securities well-nigh valueless.

Mercer Co. v. Hackett, 1 Wal. 83, at p. 94–5.

Com'rs v. Clark, 94 U. S. 278, at p. 282.

Commonwealth v. Allegheny, 37 Pa. St. 237, at p. 240–1.

Brooklyn v. Ins. Co., 99 U. S. 362.

Township of Montclair v. Ramsdell, Oct. T. 1882, 2 S. C. Rep. 391.

Here the fraud, if any, was practiced by defendant's own agents.

No authority in the act to issue bonds with coupons attached.

This question is not involved in the present contro-

versy. It arises naturally and only in the action at law. We are asking only to have the defect of want of seals remedied. The question, at best, affects only the form of the declaration. Clearly the bonds were to bear interest *payable semi-annually*, and the invalidity of the coupons will not defeat the right to recover for the installments of interest due. They are the mere machinery by which the interest may be conveniently demanded and paid.

That the purchasers of the bonds were negligent in overlooking the want of seals and hence not entitled to the aid of equity.

Admitting the negligence, it does not help the appellant, nor hurt the respondent. We are not asking to rescind the contract on the ground of an unilateral mistake, but to enforce it in the form in which both parties understood it.

The negligence was common to both.

The appellant did not act upon the supposition that the purchasers knew the bonds were not sealed. It has not changed its position or acted irretrievably on the strength of the present shape of the bonds. There is nothing in the case to estop us from asking equity to supply the omission. Mere negligence in failing to discover it does not raise any estoppel, unless it has misled or injured the other party.

The cases cited by the appellant have no application to the case in hand. They are cases of mistake of fact inducing the contract or influencing conduct, and are completely answered by

Wadsworth vs. Wendell, 5 J. C., 224, and

Inhabitants of Montville vs. Houghton, 7 Conn., 543. (Page 42 of brief.)

If a vendor of land delivers a deed of conveyance of it as a perfect deed, and receives the consideration from the vendee, and the deed proves defective for want of a seal; no estoppel arises against the vendee for negligence in accepting such a deed. On the contrary, the estoppel arises against the vendor to deny that the deed is a perfect deed.

V.

The defendants urge a fifth defence, which goes to the greater part of the bonds set out in the bill, viz: *That the complainant is not the real owner of them, but a mere bearer or trustee for others.*

See the "*agreement*," p. 200, Ex. B 1, put in by the Township.

The bonds are payable to bearer, and are, and have been all the time, in the possession of the complainant; they were produced by him before the Master.

See evidence of *Stone*, p. 85 of case.

Complainant is the "*bearer*" of each bond, and the defendant is bound by the terms of its contract to respond to him for them.

The allegations of the bill in respect to this matter are found on pp. 17, 18 of case.

The evidence with regard to their history and actual ownership is found on pp. 53–92 of the case.

By that evidence it appears that *Curtiss* owned Nos. 17 and 18, $1,000 each, - $2,000

J. L. Welling, - -	1,300
G. K. Nanney, - - -	1,000
M. J. Sly, - - -	500
J. C. Young, - - -	200
Total, - - -	$5,000

All of the above-named bondholders, at and before the time the suit was brought, resided in the State of New York.

Neither *Welling*, *Nanney*, *Sly* nor *Young* signed the combination agreement; they delivered their bonds to Mr. Curtiss for suit.

All the rest were owned by residents of New Jersey, and were handed to *Mr. Curtiss* for suit under the agreement, p. 200.

Two things are clear.

1. The two bonds purchased and owned by *Mr. Curtiss* in his own right, amounting to $2,000 and interest, are, of

course, more than sufficient to give him a lawful standing in the New Jersey Federal Court.

The case in this respect is in marked contrast with those cases where—as in *Williams v. Nottawa*, 104 U. S., p. 209—the plaintiff did not, in his own right, own bonds enough to give the Court jurisdiction. *Mr. Curtiss* cannot be turned out of Court. He is rightfully here, and his bill must be retained and listened to and adjudicated upon, on its merits.

2. The bonds are negotiable by delivery without assignment, and any person, having the requisite citizenship, may maintain an action on them in the Federal Court, without regard to their previous ownership, or the citizenship of the payee, if any, therein named.

Indeed, in this case, no payee is named—the bonds are payable to bearer.

Thompson v. Perrine, 106 U. S., 589, at p. 591—3;
Chickaming v. Carpenter, 106 U. S., 663;
Smith v. Clapp, 15 Pet., 125, at p. 128;
Bonnafee v. Williams, 3 How., 574, at p. 577;
Deshler v Dodge, 16 How., 622, at p. 631.

In order to bring a case within the terms of the section of the statute forbidding actions by an assignee, when the assignor could not sue in the Federal Court, an actual assignment must be a necessary part of plaintiff's right of action.

Actions on instruments, negotiable by mere delivery, are not within its terms.

I submit that it follows that this case is not within the reasoning of the Court in *Williams v. Nottawa*, as deduced from the facts of that case and the point decided; and that the relief should be extended to all the bonds.

The Court is not forbidden so to do by anything in the fifth section of the act of March 3, 1875, (18 Stat. at large, p. 472.) That section aims at two classes of cases.

First, Where the suit does not "*really* and *substantially* involve a dispute or controversy properly within "the jurisdiction of the Court."

Second, Where "the *parties* to said suit have been

"*improperly* or *collusively* made or joined, either as "plaintiffs or defendants, for the purpose of creating a "case cognizable under this act."

As to the *first* class or category. Certainly this suit, upon the strength of the two bonds confessedly owned by complainant in his own right, "really and substan-"tially involves a dispute and controversy within the jur-"isdiction of this Court." Complainant was, at the date of filing the bill and until his death, a resident of New York; and, without considering those held in trust, the amount in dispute is the sum of the two bonds for $1,000 each, with arrears of interest, the question being the liability of the township to pay them.

As to the *second* class or category. Surely no "*parties*" to this suit "*have been improperly made or joined* "*for the purpose of creating a case cognizable*, &c." By the words, "*parties to the suit*," in the act is meant, actual parties whose names appear as such on the record. Persons beneficially interested in the result of the suit, but who are not named as parties on the record, are not "*parties to the suit*" in the sense in which these words are used in the act.

None of the several persons who are equitable owners of some of the bonds are parties to this suit.

The scope of the act of March 3, 1875, must be considered in construing this fifth section.

By it, Congress for the first time put it in the power of a party plaintiff or complainant, who had brought his action in a State Court, to remove it, under certain circumstances, to the Federal Court. The terms of the second section are very broad, and the legislators could not anticipate with certainty what construction the Courts would put upon it. For instance, a citizen of a particular State might have an equitable demand against a citizen of the same State which he might desire to litigate in the Federal Courts, and the circumstances of the case might furnish some color of excuse for making a friend

of complainant, residing in a neighboring State, a party to the suit. Complainant might file his bill in equity in the State Court against his real antagonist, making his non-resident friend a party, and having procured his appearance, remove the cause into the Federal Court under the second section of the act, on the strength of the non-residence of the collusive defendant; or, he might file his bill originally in the Federal Court and make his non-resident friend a party, who comes conveniently into the State to be served with process.

To guard against such collusive making of parties as that, the second clause of the fifth section was inserted.

It applies exclusively to equity causes in which persons are unnecessarily or collusively made parties for the purpose of giving the Federal court jurisdiction, either originally or upon removal from the State Court.

There are no such parties here. And it is difficult to see how the circumstances of this or any like case can be brought within that second class or category of the fifth section.

It would seem, then, clear enough that there has been no breach of the statute in question; and the only question left is, whether the Court will decide that it will in no case approve and permit to be carried through a *combination suit* for the enforcement of claims like those before the Court.

Here, and in like cases, these bonds are put on the market and find their way into the hands of a great many small holders, country people of small means who make small investments. In order that such securities should bring a full price, it is to the interest of the obligors that they should be widely distributed.

The municipality makes default. Long and expensive litigation results. Unless these scattered bondholders can combine and share the expense of the litigation, their bonds are not worth putting in suit, and the only course left them is to sell out, at a ruinous sacrifice, to some speculator who buys them for the purpose of suing on them. I submit that neither the letter nor the policy of

the law leaves us in such a predicament.

After this point had been strongly and elaborately pressed by counsel for the township in the Court below, Justice McKennan, speaking for himself and Judge Nixon who sat with him, stopped counsel for complainant in reply, remarking that he thought such combinations entirely proper and that they should be encouraged by the Court on the score of saving expense and litigation, whenever, as here, there was a case within the jurisdiction, irrespective of the contributed bonds.

What harm, I ask with great respect, is done to anybody by such a combination? No more costs are made for the township, but presumably less. The question is the same in each case. The several holders would either sue separately on their bonds and thus make more costs for the township, or be prevented from suing at all, and thus lose their just claims through fear of expense. Either result is undesirable.

It may be suggested that the citizens and residents of New Jersey should go into her Courts, and that the reason of their suing in the Federal Court is that they expect more favorable results there.

Suppose this to be true, and suppose, if possible, that on the same facts the State Court would decide against the bondholders, and the Federal Court in their favor. What would be the result? A judgment against the township on those bonds held by non-residents, and in its favor on bonds held by residents. Is such a result desirable?

In point of fact, a large amount of the bonds in question are held in good faith by non-residents. Many of them have brought, and all can bring suit on them in the Federal Court. Shall their mere non-residence give them an advantage over citizens of the State?

The joining of claims of this kind is no new or unusual thing. It must have occurred and been brought to the attention of the Circuit Courts many times.

It did occur in *Com'rs vs. Bolles*, 94 U. S., p. 104, and judgment for the plaintiff on a batch of bonds, owned partly by himself, and partly by other parties, was affirm-

ed by this Court. At p. 109, the Court says:

"Do, then, the plaintiffs below stand in the position "of *bona fide* holders for value paid, and without notice "of any defect or irregularity in the proceedings anterior "to the issue of the bonds? In view of the findings of "the Circuit Court, very plainly they do. They are the "holders of the coupons in suit taken from those bonds, "some of which they purchased without notice of any "defence. *The residue of those held by them are owned "by other persons, who deposited them with the plaintiffs "for collection taking a receipt.* There is no evidence "when or for what consideration those other persons pur- "chased, and no evidence of actual notice to them or to "the plaintiffs of any of the facts anterior to the issue of "the bonds."

And in *Cromwell v. County of Sac*, 94 U. S., p. 351, the estoppel set up was that one Smith, a previous holder of the bonds, had sued upon certain coupons and been defeated. It appeared that Smith was a mere trustee for Cromwell. At p. 360, the Court said:

"Upon the second question presented, we think the "Court below ruled correctly. Evidence showing that the "action of Smith was brought for the sole use and benefit "of the present plaintiff was, in our judgment, admissible. "The finding that Smith was the holder and owner of "the coupons in suit went only to this extent, *that he "held the legal title to them, which was sufficient for the "purpose of the action, and was not inconsistent with an "equitable and beneficial interest in another.*"

I am afraid, that in presenting the foregoing line of argument, I may be, presumptously perhaps, running somewhat counter to some of the language used by the Court in *Williams v. Nottawa.* But, I respectfully submit that the language there used should be construed in connection with the facts of the case (which are peculiar and do not appear fully in the opinion) and with what was actually decided.

The printed record on file in this Court shows the following facts:

Kline and Connor, residents of Nottawa and contractors for some part of the work on the Railroad through the town, procured certain of the Township officers to issue and deliver the whole batch of bonds voted in aid of the Railroad—$15,000—to them, Kline & Connor, before certain prerequisites had been performed by the Railroad. Kline & Connor retained all of these bonds except $600, which came into the hands of *bona fide* purchasers—$300 belonging to Williams the plaintiff, and $300 to one Tobey. In 1874, Kline and Connor hunted up Williams and Tobey and induced them to unite their bonds in Williams, a resident of Indiana, and the latter to sue in the Federal Court, uniting in his suit their—Kline and Connor's—whole batch of bonds. At the trial, the Judge ruled that Williams could recover only for the $600—held $300 by himself, and $300 by Tobey, who were *bona fide* purchasers without notice of the irregularity or fraud practiced by Kline and Connor—ruling out the main body of the bonds held by K. & C., not on the ground that the plaintiff could not recover on them as bearer unless he was the actual owner, but because Kline and Connor were not *bona fide* purchasers without notice, but, in fact, parties participant in the irregularity and fraud by which they were issued. That Kline and Connor, and not Williams, were the masters of the litigation, appears clearly enough from the circumstance that the latter, not content with a judgment in his favor for all he actually owned, brings a writ of error to reverse that judgment. Of course, that was done by Kline and Connor.

We have then the case of parties owning more than fourteen-fifteenths of all the bonds, hunting up a non-resident holder of one-fiftieth of them, and suing on them in his name in the Federal Court, hoping there to obtain a judgment which they appeared to have despaired of getting in the State Court, where, by law and every consideration of public policy, the litigation actually belonged.

The contrast between that case and this is palpable. With Kline and Connor, the actual owners of the bulk

of the bonds, and the actual masters of the litigation —as much so as if they had been parties plaintiff on the record—the language of the Court (p. 211) is apt. "It cannot for a moment be doubted that this" (the joining of bonds and bringing of suit by Kline and Connor in the name of Williams) "was done for the pur- "pose of 'creating a case for Kline and Connor,' cogniz- "able in the Courts of the United States."

The "*creation of a case cognizable*" was accomplished by joining the bonds of Williams and Tobey; and that this "*case cognizable*" was "*created for*" Kline and Connor, appears clearly enough from the circumstance that *their* bonds were joined and *they* were made masters of the litigation.

It cannot be supposed that the Court intended to overrule, *sub silentio*, the previous case of *Comrs. v. Bolles*, and the language above quoted in *Cromwell v. Sac County*.

That the attention of the writer was not called to the exact force of the language used, and its effect upon other cases not precisely similar, appears from the sentence at the bottom of p. 211. "*It is clearly shown that Williams and Tobey were collusively joined as plaintiffs to create a case cognizable in the Circuit Court*, &c." And yet, there was in point of fact, no "*joining as plaintiffs*" in the case. Williams was sole plaintiff, and Tobey's bonds were given to him to collect, precisely as was done in *Comrs. v. Bolles*.

A *joining of claims* to be sued in the name of one person cannot be held to be a "*making*" or "*joining of parties*" in any sense of those words; much less is it a making or joining of parties such as is described and forbidden in the 5th Sect. of the Act of March 3, 1875.

I have endeavored above to show that the language there used was aimed at the joining of unnecessary parties in Equity cases, on the ground that they are interested in or will be affected by the result of the litigation—as encumbrancers or guarantors and the like—as in the case of the Executors of Beekman, joined as defendants herein, because he had guaranteed these bonds to the township.

The idea the learned writer of the opinion intended to express by the passage above quoted was that Tobey had *joined his bonds* with Williams' bonds in order to make between them what neither had alone—an amount sufficient to give the Court jurisdiction; to create a case within the jurisdiction of the Court; and all this more abundantly appears by the reason given for dismissal on page 212, "*because it did not 'really and substantially' involve a dispute or controversy within the jurisdiction of that Court.*"

If Williams had owned a bond or bonds amounting, at the time the suit was brought, to more than $500, then the suit would have involved a dispute and controversy within the jurisdiction of the Court, and then the putting in the suit of other bonds owned by other parties could not be said to have been done for the purpose of creating a case cognizable in the Federal Court.

James C. Ritchie
Counsel for appellee

Pasted in Book of Certificates, Exhibit C 64.

No. 32. 2,540 shares.

STATE OF NEW JERSEY,

PASSAIC VALLEY & PEAPACK RAILROAD COMPANY.

This is to certify that the township of Bernard of Somerset County, N. J., is entitled to twenty-five hundred and forty shares of the capital stock of the Passaic Valley & Peapack Railroad Company, transferable only on the books of the company at their office, by it or its attorney, upon surrender of this certificate.

In testimony whereof, the said company have caused this certificate to be signed by their President and Secretary, and the seal to be affixed.

(Revenue Stamp.) Jersey City, January 13th, 1870.

New Jersey West Line Railroad Company.

JOHN H. LYON,
President.

BEVERLY C. SANDERS, Secretary.

(Written across face.)

Cancelled March 3rd, 1873, and sixty shares transferred to B. F. Beekman—certificates Nos. 96 & 97 in new book issued for balance.

F. F. VAN DERVEER.

(Endorsed.)

For value received, we hereby sell, assign and transfer unto Benj. F. Beekman, sixty (60) shares of the within stock and authorize F. F. Van Derveer to transfer the same on the books of the company.

Dated this 3rd day of March, 1873.

In presence of William Ferguson.

JOHN H. ANDERSON,
JOHN GUERIN,
OLIVER R. STELLE,
Commissioners of Bernard.

Extracts from the "Act concerning taxes," as found in Nixon's (N. J.) Digest, Fourth Edition, 1868.

An Act concerning Taxes—Revision. Approved April 14, 1846.

*938]

1. The Assessor of every township shall, between the twentieth day of May and the twentieth day of August, annually, take a true account, and make out an exact list of the persons, lands, chattels, effects, and estates, including certainties made ratable by law in that year, by which all assessments during the said year shall be regulated and made; and every inhabitant of the township shall, on application of the assessor, forthwith render a full and true account of his name and his ratable lands, chattels, effects, and estates as aforesaid, which the assessor shall set down in writing, in order that the legislature may ascertain the proportion or quota of each county, and that every individual may be duly and justly assessed. (See 84, 116.)

* * * * *

3. When any money shall be directed to be assessed, collected, and paid into the treasury of this state, agreeably to this act, it shall be the duty of the assessors of the several townships, in every county, to meet at the hour of ten in the forenoon of the first Monday in September, in every year, at the place of holding the court of common pleas in such county, and at such meeting to furnish full, true, and accurate abstracts, under oath or affirmation, from their respective tax books, of ratable lands, chattels, effects, estates, and certainties, so by them respectively made, as required in the first and second sections of this act, and then and there to ascertain the amount of the certainties required by law to be rated in the assessment to be made, and to estimate the estate, real and personal, taken by the assessor of each township, at such valuation as they or a majority of them then present shall think reasonable and just, according to the law for the time being for that purpose, and thereby to adjust and fix the proportion or quota of the tax to be levied and collected in each township. (See 94.)

4. It shall be the duty of the said assessors, at such meeting, to make out two abstracts of the amount of all the ratables in each township, in the manner heretofore practised, designating in separate columns in said abstracts the amount of quotas, if any, of county, poor and road tax, to be assessed and collected in the different townships, and also the number of taxable inhabitants in each township; which shall be signed by every assessor present, and on the same day delivered to the county collector, who shall lay one of the said abstracts before the legislature, during the course of the first week of their stated annual session.

5. The said assessors shall, within fifteen days after such meeting, deliver to the township collector a true transcript or duplicate of the said assessment, in which they shall add together the sums contained in each column, and place such aggregate sum at the foot of each column, through every page.

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6. The amount of the certainties shall be deducted by the said assessors from the quoto or sum apportioned to every township, and the remainder of the said quoto or sum, with the fees of assessment, collection, and paying over to the treasurer, shall be assessed on the other taxable property within such township, according to the valuations aforesaid, at such rate per dollar as will be sufficient to produce the sum required. (See 84.)

* * * * *

8. If any person shall think himself aggrieved by such assessment, he may appeal to the commissioners of appeal in cases of taxation, in and for the proper township, who are hereby required to convene on the fourth Tuesday of November, annually, for the purpose of discharging the duties of their office in all matters arising under this act.

* * * * *

11. The township collector, within sixty days after receipt of the transcript or duplicate of the said assessment, shall demand payment of the tax or sum assessed on each individual in his township, in person or by notice left at his or her place of residence, and also give notice of the time and place of the meeting of the said commissioners of appeal; and the said collector shall pay the taxes by him collected, and the fines and forfeitures by him received, by virtue of any law of this state, to the collector of the county, by the twenty-second day of December in every year. (See 110.)

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47. The commissioners of appeal in cases of taxation, in and for every township, shall, for the purpose of discharging the duties of their office, convene at the usual place of holding town meeting,
*945] and at such times, where it is not otherwise directed by law, as they shall appoint, giving at least eight days' previous notice of every such meeting in writing, under their hands, and fixed up at six or more of the most public places in such township. (See 8.)

48. It shall be the duty of the assessor who made the assessment appealed from, to attend at the said time and place before the said commissioners, and to offer such reasons as he may think proper in support of the said assessment.

49. The said commissioners, after due examination of the facts and consideration of the case, shall give such judgment as shall be agreeable to the principles of justice, which judgment shall be final and conclusive, and shall be rendered within three days after the hearing of the said appeal.

50. It shall be the duty of the said commissioners to give a transcript of their judgment to the appellant, in case such judgment shall pass in his or her favor, which transcript shall be a sufficient voucher to such appellant; and the collector of such township, in collecting the taxes of the same, and every other officer whom it may concern, is hereby directed to govern himself accordingly.

Supplement. Approved March 9, 1848.

57. SEC. 2. If any person or persons, body politic or corporate, shall be assessed at too low a rate, or be omitted in the assessment, it shall be lawful, upon complaint made, for the commissioners of appeal in cases of taxation, after five days' notice in writing to the party interested, by the party complaining, and after due examination of the facts and consideration of the case, to make such addition to the assessment as shall be agreeable to the principles of justice; and the judgment of the said commissioners shall be final and conclusive, and shall be rendered within ten days after the making of said complaint. (See 103.)

A further supplement to an an act entitled "An act concerning taxes," approved April fourteenth, eighteen hundred and forty-six.
Approved April 11, 1866.

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94. SEC. 12. When any money shall be directed to be assessed for state or county purposes, it shall be the duty of the assessors of the several townships and wards in the county to meet at the time prescribed by law in every year at the place of holding the court of common pleas in such county, and each of the said assessors shall produce his duplicate of the value of real and personal estate to be by him assessed, with the amount of each column and the total of all the columns correctly added together, and shall also produce an affidavit by him subscribed and taken upon his oath or affirmation before some person authorized to administer oaths, of the following or like tenor and effect, viz: "I, ——— assessor of———, do hereby swear (or solemnly affirm), that I have diligently inquired respecting the nature and value of the real and personal estate liable to taxation in the township (or ward) whereof I am assessor, and have to the best of my ability, and without favor or partiality, valued all the said property liable to taxation in said township (or ward) at its full and fair value, at such price as in my judgment said property would sell for at a fair and bona fide sale by private contract on the day prescribed by law for commencing the assessment, and have deducted from such value only such balance of debts as is prescribed by law;" and if any assessor shall be unable to attend such meeting, it shall be his duty to send his duplicate with the affidavit aforesaid, and in case any assessor neglecting to attend, or to produce or send his duplicate and affidavit aforesaid, the majority of the assessors convened shall estimate the value of the property liable to assessment in the township or ward of the absent assessor, according to the best of their information and belief. (See 3.)

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103. SEC. 21. The collector, immediately after having received his duplicate from the assessor, shall submit the same to the committee of the township or common council of the city or borough whereof he is the collector, and it shall be the duty of said committee and common council carefully to examine the same, and if they have reason to believe that any individual or corporation has been assessed at too low a rate, or omitted to have been assessed, as required by law, they shall thereupon authorize and require the collector to notify the

said individual or corporation that complaint will be made to the commissioners of appeal in cases of taxation, and the said collector shall, at least ten days before the time of meeting of said commissioners, deliver to said individual or leave at his dwelling house or deliver to the president, cashier, treasurer, clerk or secretary, or if no such officer can be found, to any director of the corporation, or leave at the place of business of such corporation, a notice in writing or printing of the following or like tenor, viz: "To : You are hereby notified that complaint will be made to the commissioners of appeal in cases of taxation at , on next, that you have been assessed at too low a rate (or omitted to be assessed), to the end that, after due examination of the facts such addition may be made to your taxes as shall be right and proper and according to law;" and it shall be the duty of the collector to attend before said commissioners and to present the complaints and to supœna all proper and necessary witnesses and pay them their fees, and he shall receive out of the public money two dollars for every day he shall so attend.

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110. SEC. 28. The notice first required by the eleventh section of the act to which this is a further supplement, shall be in writing or printed, and shall set forth the number of acres assessed, the value of the real estate, and of the personal estate assessed to each one, and of the rate per dollar assessed and the several sums assessed on each person or corporation for state, county, township, poor, school, road, poll, dog and other taxes, as the same are stated on the duplicate, and the time and place of the meeting of the commissioners of appeal; and if any collector shall neglect to deliver said notice as required by the said eleventh section of the aforesaid act, he shall forfeit to each person or corporation assessed, and residing in his township or ward, whose notice he shall neglect to deliver, the sum of fifty dollars, to be recovered by action of debt in any court of record of this state.

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A further Supplement to an act entitled "An act concerning taxes," approved April fourteenth, eighteen hundred and forty-six. Approved April 11, 1867.

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115. SEC. 1. The township committee of each township, and the common council of each town, borough and city in this state shall meet and hold meetings at their usual places of meeting in their respective townships, towns, boroughs and cities, on the third Tuesday in August of each year, for the purpose of examining, revising and correcting the duplicate of assessment to be laid before them in the manner hereinafter provided for.

116. SEC. 2. Assessors shall hereafter finish making their assessments on or before the third Monday in August of each year.

117. SEC. 3. The assessors of the several townships, towns, wards, boroughs and cities in this state shall, on the third Tuesday in August of each year, attend the meeting of the committee or council of his township, town, borough or city, and lay before them the duplicate of assessment, to be by them examined, revised and and corrected; and that it shall be his duty to remain with said council, for the purpose of explaining the said duplicate, and assisting said committee or council in the discharge of the duties required of them by this act.

118. SEC. 4. Said committees and councils respectively shall have power to adjourn from time to time, as they may deem expedient, for the purpose of discharging the duties required of them by this act: *Provided*, the said examination, revision and correction shall be made and completed on or before the last Saturday in August of each year.

BONDING ACT, April 9th, 1868.

CHAPTER CCCXCVII.

An Act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That on the application in writing of twelve or more freeholders, residents of any township in either of the counties of Somerset, Morris, Essex or Union, situate along the route of said railroad, it shall be the duty of the circuit court of the county wherein such township is situated, within ten days after receiving such application to appoint, under his hand and seal, not more than three freeholders, residents of such township, to be commissioners for such township to carry into effect the purposes and provisions of this act, who shall hold their offices respectively for the term of five years and until others shall be appointed.

2. *And be it enacted*, That it shall be lawful for said commissioners to borrow on the faith and credit of their respective townships, such sum of money not exceeding ten per centum of the valuation of the real estate and landed property of such township to be ascertained by the assessment rolls thereof respectively, for the year eighteen hundred and sixty-seven, for a term not exceeding twenty-five years, at a rate of interest not exceeding seven per centum per annum, payable semi-annually, and to execute bonds therefor, under their hands and seals respectively, the bonds so to be executed may be in such sums and payable at such times, and places, as the said commissioners and their successors may deem expedient; but no such debt shall be contracted or bonds issued by said commissioners, of or for either of said townships, until the written consent shall have been obtained of the majority of the tax payers of such township or their legal representatives, appearing upon the last assessment roll as shall represent a majority of the landed property of such township (including lands owned by non-residents) appearing upon the last assessment roll of such township, such consent shall state the amount of money authorized to be raised in such township, and that the same is to be invested in the stock of the said railroad company, and the signatures shall be proved by one or more of the commissioners, the fact that the persons signing such consent are a majority of the tax payers of such township, and represent a majority of the real property of such township, shall be proved by the affidavit of the assessor of such township endorsed upon or annexed to such written consent, and the assessor of such township is hereby required to perform such service; such consent and affidavit shall be filed in the office of the clerk of the county in which such township is situated, and a certified copy thereof in the town clerk's office of such township, and the same or a certified copy thereof shall be evidence of the facts therein contained, and received as evidence in any court of this state, and before any judge or justice thereof.

3. *And be it enacted*, That the said commissioners authorized by this act may in their discretion dispose of such bonds or any part thereof, to such persons or corporations and upon such terms as they shall deem most advantageous for their said township, but not for less than par, and the money that shall be raised by any loan or sale of bonds, shall be invested in the stock of the said railroad company for the purpose of building the aforesaid railroad, and said money shall be applied and used in the construction of said railroad, its buildings, equipment and necessary appurtenances, and for no other purpose, the commissioners respectively in the corporate name of each of their said townships shall subscribe for and purchase stock in said railroad company, to the amount they may have severally borrowed as aforesaid, and by virtue of such subscription or purchase of stock upon receiving certificates for the amount of said stock so subscribed for or purchased by them, the said townships shall acquire all the rights and privileges respectively of other stockholders of said company, and it shall be lawful for the commissioners provided for in this act, or either of them, with the consent of the others, or a majority of the said commisioners, to participate in and to act in all the regular and legally authorized meetings of the stockholders, and either of them may act as directors of said company if he shall be duly elected as such.

4. *And be it enacted*, That the said commissioners respectively authorized by this act shall report to the township committees of their respective townships, at their regular annual meeting in each year, the amount required to pay principal or the interest, if any, on the said bonds authorized to be issued under and by virtue of this act, due or to become due, and payable during the next ensuing year; the dividends arising from the stock so subscribed for, or purchased by said township in pursuance of this act, or so much thereof as may be necessary, shall be received by said commissioners and by them applied to the payment of the interest which shall from time to time accrue upon the bonds authorized by this act; and in case such dividends shall not be found sufficient in any one or more years to pay the principal and interest accruing on said bonds due and to become due as aforesaid, it shall be and hereby is made the duty of the said township committee, and they are hereby authorized and required, to cause to be assessed and levied and collected of the real estate and landed property of said townships respectively, at the same time and in the same manner as other taxes are assessed, levied and collected, such sum or sums of money as shall have been reported to said township committee, by the said commissioners authorized by this act, to be necessary to make good such deficiency in the payment of the said principal and interest on the said bonds, and the same when collected shall be paid to said commissioners respectively, and by them applied to the payment of the principal and interest on said bonds, or so much thereof as shall remain unpaid after the application of said dividends to that purpose.

5. *And be it enacted*, That it shall be lawful for such railroad company to agree with the said commissioners respectively in behalf of their respective townships, to pay the same annual interest accruing on the bonds issued by such townships for the term of three years, or

until said railroad shall be completed and in operation, and earning sufficient to pay dividends equal to the interest from time to time accruing on said bonds.

6. *And be it enacted*, That the said commissioners appointed under and by virtue of this act, may, at any time after acquiring such capital stock, exchange the same in whole or in part for the bonds issued under the authority of this act, and in such case they shall cancel the bonds so received by them, or they may dispose of such stock in their discretion to any purchaser or purchasers for cash, but shall not sell or dispose of such stock at less than par, except at public sale, of which twenty days' notice shall be given in two newspapers published in their respective counties; but no such sale shall be made except by consent obtained to the extent and in the manner provided in the second section of this act; and in case of sale of said stock, either at public or private sale, the proceeds thereof shall be applied by said commissioners respectively to the purchase or redemption of the bonds authorized to be issued by this act, and for no other purpose whatever.

7. *And be it enacted*, That at the expiration of twenty-five years after the passage of this act it shall be and hereby is made the duty of the said board of assessors, and they are hereby authorized, unless the payment of said bonds is otherwise provided for, to cause to be assessed and levied and collected on the real and landed estate of each of said townships, at the time and in the manner as other taxes are assessed, levied and collected, the sum due on the said bonds so issued in pursuance of this act, together with the interest on said principal sum, or so much thereof as may remain unpaid by reason of the deficiency of the dividends and sale of said stock; the amount so to be raised under the authority of the said township committees for the payment of the principal or interest shall be determined by the report of the said commissioners, respectively, to the said township committee as hereinbefore authorized by this act.

8. *And be it enacted*, That the said commissioners shall also provide, within five years from the time of issuing said bonds, for the annual payment of at least five per centum of the same so as to insure the final liquidation of said bonds within twenty-five years after their date, and for that purpose they shall receive and apply annually the surplus dividends on the stock held by said townships over the amount necessary to pay the semi-annual interest on said bonds; and if the amount of such surplus dividends is not sufficient for the annual payment of said five per centum, and the said commissioners shall not have received sufficient from the sale of stock as herein provided to pay the same, then the deficiency shall be reported by the said commissioners to the township committee, to be levied and raised annually in the manner herein provided for paying the interest on said bonds.

9. *And be it enacted*, That before the said commissioners, or either of them, shall enter upon the discharge of their duties under this act, they shall jointly and severally, with two or more sureties, execute to their respective townships by their respective corporate names, a bond in the penal sum equal to the amounts to be issued to said townships

under and by virtue of this act, conditioned for the faithful discharge of their duties as commissioners under this act, and for the just and honest application by them of all moneys, stocks or bonds issued by them or coming into their hands, according to the true intent and meaning of this act; the sufficiency of such sureties shall be determined by the township committee of such township respectively, or by the judge of the circuit court of the county in which such township is situated, to be endorsed on said bonds; said bonds shall immediately thereafter be deposited with the clerk of each of said townships, to be safely kept under the direction and control of the township committee, to be collected by them or their successors in office, for the use and benefit of said township, in case the said commissioners, or either of them, are guilty of such a breach of duty or malfeasance in office as to render said bond collectable.

10. *And be it enacted*, That in case a vacancy shall happen by reason of death, removal from said township, resignation or refusal to serve or otherwise, of either of said commissioners provided for in this act the vacancy shall be filled by the remaining commissioners of the township in which the vacancy so exists, by appointment, in writing, to be deposited with the township clerk of said township; each and every person so appointed shall, before he enters upon the discharge of his duties, execute and deliver to the said township in like manner, a bond in like amount, with like conditions and securities as hereinbefore provided; and all provisions of this act shall apply to the successors of the commissioners provided for in this act, whose powers and duties and liabilites shall be the same as those of the commissioners first appointed under this act.

11. *And be it enacted*, That each of the said commissioners shall receive the sum of two dollars per day for each day actually engaged in the discharge of his duties under this act, and his necessary disbursements to be audited and paid by the township committee the same as other township expenses.

12. *And be it enacted*, That the commissioners in each of said townships shall constitute a board to act for their said townships respectively, and a majority of said commissioners in each of said boards shall constitute a quorum to do any business authorized by this act.

13. *And be it enacted*, That on the expiration of the term of office of either of the commissioners provided for in this act, or of their successors, his place shall be filled in the manner provided in the first section of this act, and the commissioners so appointed, as well as those to be appointed under the tenth section of this act, shall be residents and freeholders of the township for which they are to act as such commissoners.

14. *And be it enacted*, That all bonds issued in accordance with the provisions of this act shall be registered in the office of the county clerk of the county in which the township is situated, issuing the same, and the words "registered in the county clerk's office," shall be printed or written across the face of each bond, attested by the signature of the county clerk when so registered, and no bond shall be valid unless so registered.

15. *And be it enacted*, That this act shall be a public act, and shall take effect immediately.

Approved April 9, 1868.

Exhibit C 45

A

We, the undersigned, taxpayers of the Township of Bernards, in the County of Somerset, in the State of New Jersey, do hereby consent that the Commissioners appointed for said Township to carry into effect the Act of the Legislature of the State of New Jersey entitled "An Act to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may under the provisions of said act, borrow on the faith and credit of said Township, and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such Township, ascertained by the assessment rolls thereof for the year 1867), which money is to be invested in compliance with the provisions of said act, in the stock of the said Railroad Company; and that the said Commissioners may exercise full and complete powers for said Township, to carry into effect the purposes and provisions of said act.

Dated July 20th, 1868.

John H. Anderson,	Edmund S. Janes,
Charles S. Quimby,	Moody Bloodgood,
Bradner Guerin,	Henry Baird,
Roderick A. Mitchell,	James H. Whitenack,
Robert Hanna,	William Hamler,
William Amerman,	Eliza Ballentine,
Daniel S. Doty,	James H. Winget,
John S. Quimby,	Abram B. McCollum,
W. A. McMurtry,	Edward Hight,
Thomas Bird,	Wm. K. Collyer,
John O. Rush,	Cornelia J. Collyer,
Thomas G. Bunn,	Nicholas W. Riel,
Hugh R. Bunn,	Jacob Cole,
William Barker,	Christiana Petty,
Charles Barker,	Jacob L. Smith,
Con Smyht,	Calvin H. Dunham,
Garret V. Freeman,	Robert McMurtry,
James W. Bunn,	James McMurtry,
S. S. Voorhees,	David S. Dunn,

John H. Whitenack,	Luther Axtell,
Peter Welsh,	Mary Isaacs,
Henry Demun,	Michael Lumehan,
William Demun,	Francis Oliver,
John Voorhees,	John Y. Marsh,
Andrew McWilliams,	Theodore Woodward,
John Shoats,	Michael Havey,
Patrick Gougerty,	John H. Harris,
William Lawrence,	George Butz,
Wm. Ballentine,	Thomas Lidy,
John G. Ballentine,	Michael Norris,
Leonard H. Bird,	Hannah Bird,
William S. Frost,	Oliver Woodward,
William Riel,	Fer'd VanDoren,
David VanNess,	William Reynolds,
Hugh Sheridan,	A. McMurtry,
John Mullen,	William Childs,
John Maher,	Peter D. Cross,
Ann M. Blazure,	John T. Bair,
G. T. Bunn,	Ellen Blin,
Dennis H. Layton,	Oliver Dunster,
James Blazure,	Ogden Allen,
Daniel D. Savadge,	Jacob Wadnow,
Samuel S. Stout,	Daniel Martin,
Josiah Ludlow,	Job Compton,
Enoch M. Bedell,	Amos M. Douglass,
Henry Ludlow,	David G. Schomp,
John Scolly,	Stephen N. T. Meeker,
James H. McCollum,	Abraham Quimby,
Walter K. Sturges,	Joseph Murphy,
Morris P. Crater,	John V. Bunn,
John B. Dunster,	Conrad Weber,
John F. Hall,	Peter Z. Smith,
Andrew S. Cole,	William Ballentine, Jr.,
John McCollum,	Erastus Ballentine.

Witness : JOHN H. ANDERSON.

STATE OF NEW JERSEY, }
SOMERSET COUNTY, } ss.

On the nineteenth day of September A. D. eighteen

hundred and sixty-eight, before me, the subscriber, one of the Justices of the Peace in and for the County aforesaid, personally appeared John H. Anderson, to me well known to be one of the Commissioners for the Township of Bernards, in said County, to carry into effect the purposes and provisions of the act of the Legislature of the State of New Jersey, entitled "An Act to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union, to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who being by me duly sworn according to law, on his oath saith, that he resides in said Township, and is one of the said Commissioners; that he knows J. H. Anderson, Chas. S. Quimby, Bradner Guerin, Edmund S. Janes, Moody Bloodgood, Henry Baird, Roderick Mitchell, Robert Hannah, William Amerman, Daniel S. Doty, John S. Quimby, W. A. McMurtry, Thomas Bird, John O. Rush, Thomas G. Bunn, M. R. Bunn, William Barker, Charles Barker, Con Smyht, Garret V. Freeman, James W. Bunn, S. S. Voorhees, John A. Whitenack, Peter Whelch, Henry Demun, Wm. Demun, John Voorhees, Andrew McWilliams, John Shoats, Pataric Geanerty, William Lawrence, William Ballentine, John G. Ballentine, Leonard H. Bird, James H. Whitenack, William Hamler, Eliza Ballentine, James H. Winget, Abm. B. McCollum, Edward Hight, Wm. R. Colyer, Cornelia J. Colyer, M. W. Rial, Jacob Cole, Christiana Betty, Jacob Z. Smith, Catharine H. Dunham, Robert McMurtry, James McMurtry, David S. Dunn, Luther Axtell, Mary Isaacs, Michael Lennehan, Francis Oliver, John Y. Marsh, Theodore Woodward, Michael Havey, John H. Harris, George Butz, Thomas Lidy, Michael Norris, Hannah Bird, William S. Frost, William Riel, David VanNest, Hugh Sheridan, John Maher, John Mullen, Ann M. Blazier, G. T. Bunn, Dennis H. Layton, James Blazier, Daniel D. Savage, Samuel S Stout, Josiah Ludlow, Enoch M. Bedell, Henry Ludlow, John Scally, James H. McCollum, Walter K. Sturges, Morris Crater, John B. Dunster, John L. Hall, Andrew S. Cole, John Mc-

Collum, Oliver Woodward, Ferd. VanDoren, William Reynolds, A. McMurtry, Peter D. Cross, William Childs, John L. Blair, Ellen Blair, Oliver Dunster, Ogden Allen, Jacob Wannow, Daniel Martin, Job Compton, Amos M. Douglass, David G. Schomp, Stephen N. T. Meeker, Abraham Quimby, Joseph Murphy, John V. Bunn, Conrad Weber, Peter Z. Smith, William Ballentine, Jr., Erastus Ballentine, the persons whose signatures are witnessed by him signed to the foregoing consent, and knows them to be persons who signed and executed the same after having been fully informed of the contents thereof, and that he was present and saw the said persons above named sign, seal and deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said John H. Anderson, subscribed his name to the same at the same time as an attesting witness.

JOHN H. ANDERSON.

Proved, sworn and subscribed before me,

JAMES H. THOMPSON,
Justice of the Peace.

WE, the undersigned, tax payers of the Township of Bernards, in the County of Somerset, in the State of New Jersey, do hereby consent, that the Commissioners appointed for said Township to carry into effect the act of the Legislature of the State of New Jersey, entitled "An Act to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may, under the provisions of said act, borrow on the faith and credit of said Township, and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such Township, ascertained by the assessment rolls thereof for the year 1867), which moneys to be invested in compliance with the provisions

of said act, in the stock of the said Railroad Company; and that the said Commissioners may exercise full and complete powers for said Township, to carry into effect the purposes and provisions of said act.

Dated July 17, 1868.

Thomas K. Heath,	Nathaniel Compton,
George Gidney,	Jacob VanArsdale,
R. Irving,	John Rickey,
Wm. Noel Corbet,	Maranda Gillaspey,
J. H. Osborne,	Calvin Thompson,
John C. Cross,	C. S. DeCoster,
Rachel Ann Sanders,	Samuel S. Adamson,
David L. Lewis,	Carl Kampimer,
P O. Belding,	J. L. VanLiew,
Eli Howlett,	W. H. Dikeman,
John Dayton,	Augustus Moore,

Augustus Moore, Administrator of Estate of Jont. Moore, dec'd.

Daniel D. Craig,	William Allen,
James Allen,	Robert Blair,
Arminda Blair,	Samuel C. Dayton,
William B. Cooper,	John Guerin,
Charles Grenlock,	Cornelius Winne,
Henry Winne,	Freeman Pennington,
Robert C. Bishop,	John Hippemeyer,
Israel Bedell,	John H. Lyon,
Samuel his X mark. Elden,	Joseph Alward,
Oscar Conkling,	J. V. Stewart,
John J. Allen,	A. T. Albro,
James H. Thompson,	Peter A. Layton,
Patrick Moore,	Henry H. Apgar,
Michael Donovan,	Daniel H. Powelson,
John Crampton,	Charles P. Crue,
David McDermott,	Jonathan M. Fisher,
Charles Butler,	John C. Latourette,
A. V. Stevens,	Ira B. Prudden,
Robert C. Galtra,	S. R. DeCoster,
E. A. Doty,	D. F. Dunham,

C. S. DeCoster, Adm'r of P. S. Collyer Est.

nard Gherity, John R. Gillespie, John G. West, Charles Crue, S. C. Dayton, William B. McMurtry, Isaac Duvall, Jonathan O. Hand, David M. Arrowsmith, Ezra Dayton, John P. Hand, Thomas B. Ayers, John P. Weinmann, E. A. Webster, F. J. VanWagner, P. L. Cooper, Wm. A. Heath, Eliza W. Lewis, Wm. Pope, Preston Mullener, James I. Hill, the persons whose signatures are witnessed by him signed to the foregoing consent, and knows them to be persons who signed and executed the same after having been fully informed of the contents thereof, and that he was present and saw the said persons above named sign, seal and deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said John Guerin, subscribed his name to the same at the same time as an attesting witness.

JOHN GUERIN.

Proved, sworn and subscribed before me,

JAMES H. THOMPSON,
Justice of the Peace.

WE, the undersigned, taxpayers of the Township of Bernards, in the County of Somerset, in the State of New Jersey, do hereby consent that the Commissioners appointed for said Township to carry into effect the Act of the Legislature of the State of New Jersey entitled "An Act to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may under the provisions of said act, borrow on the faith and credit of said Township, and execute bonds for the sum of one hundred and thirty thousand dollars (such sum not exceeding ten per centum of the valuations of the real estate and landed property of such Township, ascertained by the assessment rolls thereof for the year 1867), which money is to be invested in compliance with the provisions of said act, in the stock of the said Railroad Company; and that the said Commissioners may exercise

full and complete powers for said Township, to carry into effect the purposes and provisions of said act.

Dated July 25, 1868.

Oliver R. Stelle,	Joseph Armin,
Thomas Terrell,	Lawrence McKenna,
Charles A. Smylie,	Wm. V. D. Layton,
David Kline,	John Wickenhofer,
Robert B. Cooke,	John Lare, Jr.
P. S. Benbrook,	J. B. Skinner,
Hellen Hunter,	Geo. Redford.

Witness : OLIVER R. STELLE.

STATE OF NEW JERSEY, } ss.
SOMERSET COUNTY, }

On the nineteenth day of September A. D. eighteen hundred and sixty-eight, before me, the subscriber, one of the Justices of the Peace in and for the County and State aforesaid, personally appeared Oliver R. Still, to me well known to be one of the Commissioners for the Township of Bernard, in said County, to carry into effect the purposes and provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act to to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who being by me duly sworn, according to law, on his oath saith that he resides in said Township, and is one of the said Commissioners ; that he knows Oliver R. Stelle, Joseph Armin, Thomas Terrell, Lawrence M. Kenna, Charles A. Smylie, Wm. V. D. Layton, David Kline, John Wickenhoffer, Robert B. Cook, John Lane, Jr., P. S. Benbrook, J. B. Skinner, Hellen Hunter, George Redford, the persons whose signatures are witnessed by him, signed to the foregoing consent, and knows them to be persons who signed and executed the same after having been fully informed of the contents thereof ; and that he was present and saw the said persons above named sign, seal and deliver the same as their voluntary act and deed for the uses and

purposes therein expressed, and that he, the said Oliver R. Still, subscribed his name to the same, at the same time, as an attesting witness.

OLIVER R. STELLE.

Proved, sworn and subscribed before me,

JAMES H. THOMPSON,
Justice of the Peace.

STATE OF NEW JERSEY, SOMERSET COUNTY, } ss.

Be it Remembered, that on the nineteenth day of September A. D. eighteen hundred and sixty-eight, before me, James H. Thompson, one of the Justices of the Peace in and for the County and State aforesaid, personally appeared William A. McMurtry, Assessor of the Township of Bernard in said County, who, being by me duly sworn, according to law, on his oath doth depose and say, that he is the Assessor of the Township of Bernard, in said County, and is now in the possession of said office, and is discharging the duties thereof; that he has read the foregoing written consent of the tax payers of the said Township of Bernard, in said County, and that he has also read and inspected the names thereto attached, and also the proof of the signatures thereto by the Commissioners thereto annexed, and that he has also carefully inspected the assessment roll of said Township for the year eighteen hundred and sixty seven, and knows the taxpayers of said Township, and that the persons signing the said written consent are a majority of the taxpayers of such Township, and represent a majority of the real property of such Township, and also that the said persons signing the said written consent are a majority of the taxpayers of such Township appearing upon the assessment roll of such Township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they do represent a majority of the landed property of such Township appearing upon the

said assessment roll of such Township for the year eighteen hundred and sixty-seven.

W. A. McMURTRY.

Proved, sworn and subscribed before me,

JAMES H. THOMPSON,
Justice of the Peace.

STATE OF NEW JERSEY, SOMERSET COUNTY, } ss.

I, William Ross, Jr., Clerk of said County, and Clerk of the Circuit Court and Inferior Court of Common Pleas of the County of Somerset, do hereby certify that the foregoing is a true copy of the written consent and affidavits filed in the office of the Clerk of said County (relating to the bonding of the Township of Bernards), on the seventeenth day of December A. D. eighteen hundred and sixty-eight.

In witness whereof, I have hereunto set my hand and affixed the seal of said County, this [L.S.] Nineteenth day of February, A.D. 1874

William Ross Jr.
Clerk

Exhibit C 46

WE, the undersigned, tax payers of the Township of Bernards, in the County of Somerset, in the State of New Jersey, do hereby consent, that the Commissioners appointed for said Township to carry into effect the act of the Legislature of the State of New Jersey, entitled "An Act to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may, under the

provisions of said act, borrow on the faith and credit of said Township, and execute bonds for the sum of one hundred and twenty-seven thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such Township, ascertained by the assessment rolls thereof for the year 1867), which money is to be invested in compliance with the provisions of said act, in the stock of the said Railroad Company; and that the said Commissioners may exercise full and complete powers for the said Township, to carry into effect the purposes and provisions of said act.

July 9, 1869.

Jacob H. Cole,	Jas. F. Guerin,
Tunis Cole,	James O. Baird,
Parmenas Henry,	Calvin D. Smith,
Louis Shafer,	Robert Donagin,
Andrew N. Dunster,	Joachim G. Todd,
Gabriel Gephart,	Henry Smith,
Patrick Tearney,	Oliver L. Bonnell,
Halsey McMullen,	George Butz, Jr.,
J. M. Frost,	James H. McCollum,
Tappen Guerin,	George B. Marsh,
John Wray, Jun.,	David Cumming,
George Ballentine,	Seely B. Pierson,
Abram McCollum,	Oscar Smith,
David Swick,	John Petty,
Andrew J. Totten,	Henry C. Blazure,
John Cummings,	Erastus Ballentine,
Stephen Henry,	Lewis T. Janes,
John L. Hays,	Francis A. Drake,
James Allen,	Andrew J. Card,
John Wray,	William Scott,
Wm. H. Jelliffe,	Fernando Rush,
Cornelius Wolfe,	James A. Whitenack,
William Wolfe,	Stephen McMullen,
William VanDorn,	Henry Hoffman,
Barney Donagin,	Antone Rophert,
Eugene VanDorn,	John McCloud,
Charles Levan,	John Wear,
Mrs. Elizabeth Sanders,	Mrs. J. A. Sanders,

Patrick Morrison,
Ethelbert C. Blazure,
George W. Price,
James Bird,
John T. Martin,
John Bockoven,
J. S. B. Long,
George J. Anderson,
William Hambler,
Abram M. Wagoner,
Peter Demond,
Wm. H. Baird,
Richard T. Ball,
Charles P. Dunster.
John Rogers,
George S. Harmer,
Wm. T. Quimby,
Abraham Cole,
Stewart Wolfe,
Thomas B. Frost,
John G. Ballentine,
William D. Depoe,
Albert L. Axtell,
James Glanville,
Lewis H. Mannon,
C. W. Terry,
Jacob Bird,

BERNARDS, 28th August, 1869.

The above signatures were severally affixed by the parties aforesaid, whose names are hereto above signed, in presence of JOHN H. ANDERSON, Commissioner.

STATE OF NEW JERSEY, } ss.
SOMERSET COUNTY, }

On the thirtieth day of August A. D. eighteen hundred and sixty-nine, before me, the subscriber, one of the Justices of the Peace in and for the County of Somerset, personally appeared John H. Anderson, to me well known to be one of the Commissioners for the Township of Bernards, in said County, to carry into effect the purposes and provisions of the act of the Legislature of the State of New Jersey, entitled "An Act to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union, to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who being by me duly sworn according to law, on his oath saith, that he resides in said Township, and is one of the said Commissioners; that he knows Jacob H Cole, Jas. F. Guerin, Tunis Cole, Parmenas Henry, James O. Baird, Calvin D. Smith, Lewis Shafer, Robert Donagin, Andrew N. Dunster, Joachim G. Todd, Gabriel Gephert, Henry Smith, Patrick Tearney, Oliver L. Bonnell, Halsey McMullen, George Butz, J. M. Frost, James H. McCollum, Tappen Guerin, George

B. Marsh, John Wray, Jr., David Cummings, George Ballentine, Seely B. Pierson, Abraham McCollum, Oscar Smith, David Swick, John Petty, Andrew J. Totten, Henry C. Blazier, John Cummings, Erastus Ballentine, Stephen Henry, Lewis T Janes, John L. Hays, Francis A. Drake, James Allen, Andrew Card, John Wray, William Scott, Wm. H. Jelliffe, Fernando Rush, Cornelius Wolfe, James A. Whitenack, William Wolfe, Stephen McMullen, William VanDoren, Henry Hoffman, Barney Donagan, Antone Rophert, Eugene VanDoren, John McCloud, Charles Levan, John Wear, Mrs. Elizabeth Sanders, Mrs. J. A. Sanders, Patrick Morrison, John Rogers, Ethelbert Blazier, George S. Harrner, George W. Price, William T Quimby, James Bird, Abraham Cole, John T. Martin, Jacob Baird, Stewart Wolfe, John Bockoven, Thomas B. Frost, J. S. B. Long, George and Charles P. Dunster, G. Ballentine, George J. Anderson, William D. Depoe, William Hambler, Albert L. Axtell, Abram M. Wagener, James Glanvill, Peter Demond, Lewis H. Manning, Wm. H. Baird, C. W. Terry, Richard T. Ball, the persons whose signatures are witnessed by him signed to the foregoing consent, and knows them to be persons who signed and executed the same after having been fully informed of the contents thereof, and that he was present and saw the said persons above named sign, seal and deliver the same as their voluntary act and deed for the uses and purposes therein expressed, and that he, the said John H. Anderson, subscribed his name to the same at the same time as an attesting witness.

JOHN H. ANDERSON.

Proved, sworn and subscribed before me,

JAMES H. THOMPSON,
Justice of the Peace.

WE, the undersigned, taxpayers of the Township of Bernards, in the County of Somerset, in the State of New Jersey, do hereby consent that the Commissioners appointed for said Township to carry into effect the Act of the Legislature of the State of New Jersey, entitled

"An Act to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, may under the provisions of said act, borrow on the faith and credit of said Township, and execute bonds for the sum of one hundred and twenty-seven thousand dollars (such sum not exceeding ten per centum of the valuation of the real estate and landed property of such Township, ascertained by the assessment rolls thereof for the year 1867), which money is to be invested in compliance with the provisions of said act, in the stock of the said Railroad Company; and that the said Commissioners may exercise full and complete powers for said Township, to carry into effect the purposes and provisions of said act.

April 1st, 1869.

O. W. Brown,
Joseph B. Elsen,
Daniel X (his mark.) Oaks,
John H. Blazier,
William A. Dunn,
E. A. Pope,
John M. Sanders,
John T. Allen,
John H. Hollinshead,
Alexander Blazier,
John W. Craig,
Wm. S. Winget,
Peter Wolf,
A. A. Lewis,
J. K. Bishop,
Daniel T. Doty,
William X (his mark.) Willis,
J. K. Pruden,
John B. Blazier,
Joseph Thompson,
Charles H. Chapman,
James Doty,
G. C. Whyckoff,
John Willis,
H. A. Craig,
J. K. Lewis,
George Harmann,
C. C. Heath,
George Whyckoff,
James M. Bishop,
Orseneus Terry,
William H. Elsen,
Joseph X (his mark.) Blazier,
Samuel D. Doty,
John X (his mark.) White,
James Hand,
George Brown,
Allex. X (his mark.) Allen,
Daniel J. Willson,
L. A. Thompson,
W. M. DeCoster,
David B. Holt,

George Blazier,
his
Philip X Prall,
mark.
Stephen Sanders,
his
John X Whycof,
mark.
Amsy Wolfe,
John O. Heath,
John Golder,
Shubal Hudson,
John F. Millerick,
James V. Blazure,
David R. Moffett,
Robert Donagin,
James H. Pope,
Israel D. Willis,
John V. Hulick,
Theodore T. Cyphers,
his
Samuel X Stansberry,
mark.
Robert H. Lane,
Eben Peppard,
William Lethen,
Daniel Chapman,
Wm. Romer,
Charles Ditler.

Jacob VanNest,
S. D. Gillispie,
Joseph Jackson,
John R. Weinman,
S. B. Gillispie,
John Tester,
David Alward,
John Hand,
his
Erastus X Drummond,
mark.
William M. Blazure,
Hugh Geroghty,
S. H. Butler,
Charles A. Moore,
Albert Hellwick,
his
Thomas X Crofferty,
mark.
Michael Shay,
Thomas Lowery,
George D. Lewis,
J. F. Robinson,
Wm. H. Callaway,
Abraham Marker,
his
William X Dugen,
mark.

BERNARDS, 28th August, 1869.

The above signatures were severally affixed by the parties aforesaid whose names are hereto above signed, in presence of JOHN GUERIN, Commissioner.

STATE OF NEW JERSEY, }
SOMERSET COUNTY, } ss.

On the thirtieth day of August A. D. eighteen hundred and sixty-nine, before me, the subscriber, one of the Justices of the Peace in and for the County and State aforesaid, personally appeared John Guerin, to me well known to be one of the Commissioners for the

Township of Bernard, in said County, to carry into effect the purposes and provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act to to authorize certain Towns in the Counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved April 9, 1868, who being by me duly sworn, according to law, on his oath saith that he resides in said Township, and is one of the said Commissioners; that he knows O. W. Brown, G. C. Whyckoff, James Doty, Joseph B. Elson, Daniel (his X mark) Oaks, John H. Blazier, H. A. Craig, William A. Dunn, J. K. Lewis, E. A. Pope, Geo. Harman, John M. Saunders, C. C. Heath, John T. Allen, George Wykoff, John H. Hollingshead, Jeremiah Bishop, Alex'r Blazier, Orseneus Terry, John W. Craty, William H. Elgin, William S. Wright, Joseph (his X mark) Blazier, Peter Wolf, Samuel D. Doty, A. H. Lewis, John (his X mark) White, J. K. Bishop, James Hand, Daniel T. Doty, George Brown, William (his X mark) Willis, Alonx. (his X mark) Allen, J. K. Pruden, Daniel J. Wilson, John B. Blazier, L. A. Thompson, Joseph Thompson, Wm. M. DeCoster, Charles H. Chapman, David B. Holdt, George Blazier, Jacob VanNest, Philip (his X mark) Prall, S. D. Gillispie, Stephen Saunders, Joseph Jackson, John (his X mark) Whycof, John A. Weiman, Amsey Wolf, S. B. Gillespie, John O. Heath, John Tester, John Golder, David Alward, Shubal Hudson, John Hand, John F. Mellerick, Erastus (his X mark) Drummond, James V. Blazier, William M. Blazier, David R. Moffett, Hugh Geraghty, Robert Donagin, S. H. Butler, James H. Pope, Chas. A. Moore, Israel D. Willis, Albert Hellrich, John V. Hellrick, Thos. (his X mark) Cafferty, Theodore T. Cyphers, Michael Shay, Sam'l (his X mark) Stansberry, Thomas Lowrey, Robert H. Lane, George D. Lewis, Eben Peppard, J. F. Robinson, William Lethen, William H. Calloway, Daniel Chapman, Abram Masker, Wm. Romer, William (his X mark) Dugen, William Dittler, the persons whose signatures are witnessed by him, signed to the foregoing consent, and

the Township of Bernard in said County, who, being by me duly sworn, according to law, on his oath doth depose and say, that he is the Assessor of the Township of Bernard, in said County, and is now in the possession of said office, and is discharging the duties thereof; that he has read the foregoing written consent of the tax payers of the said Township of Bernard, in said County, and also similar consents filed on the 23d day of December, 1868, and that he has also read and inspected the names thereto attached, and also the proof of the signatures thereto by the Commissioners thereto annexed, and that he has also carefully inspected the assessment roll of said Township for the year eighteen hundred and sixty seven, and knows the taxpayers of said Township, and that the persons signing the foregoing written consent, together with those who signed the said consents filed 23d December, 1868, are a majority of the taxpayers of such Township, and represent a majority of the real property of such Township, and also that the said persons signing the said several written consents are a majority of the taxpayers of such Township appearing upon the assessment roll of such Township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they do represent a majority of the landed property of such Township appearing upon the said assessment roll of such Township for the year eighteen hundred and sixty-seven. W. A. McMURTRY.

Proved, sworn and subscribed before me,
JAMES H. THOMPSON, *Justice of the Peace.*

STATE OF NEW JERSEY, } ss.
SOMERSET COUNTY, }

I, William Ross Jr., Clerk of said County, and Clerk of the Circuit Court and Inferior Court of Common Pleas of the County of Somerset, do hereby certify that the foregoing is a true copy of the written consent and affidavits, relating to the bonding of Bernards Township, filed in the office of the Clerk of said County, on the first day of September, A. D. 1869.

In witness whereof, I have hereunto set my hand and affixed the seal of said County, this Twenty-first day of February, A.D. 1870.

[L.S.]

William Ross, Jr.
Clerk

109-241

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 97.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY, *Appellants*,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS OF THOMAS A. MORRISON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

the Township of Bernard in said County, who, being by me duly sworn, according to law, on his oath doth depose and say, that he is the Assessor of the Township of Bernard, in said County, and is now in the possession of said office, and is discharging the duties thereof; that he has read the foregoing written consent of the tax payers of the said Township of Bernard, in said County, and also similar consents filed on the 23d day of December, 1868, and that he has also read and inspected the names thereto attached, and also the proof of the signatures thereto by the Commissioners thereto annexed, and that he has also carefully inspected the assessment roll of said Township for the year eighteen hundred and sixty seven, and knows the taxpayers of said Township, and that the persons signing the foregoing written consent, together with those who signed the said consents filed 23d December, 1868, are a majority of the taxpayers of such Township, and represent a majority of the real property of such Township, and also that the said persons signing the said several written consents are a majority of the taxpayers of such Township appearing upon the assessment roll of such Township for the year eighteen hundred and sixty-seven, or their legal representatives, and that they do represent a majority of the landed property of such Township appearing upon the said assessment roll of such Township for the year eighteen hundred and sixty-seven. W. A. McMURTRY.

Proved, sworn and subscribed before me,
JAMES H. THOMPSON, *Justice of the Peace.*

STATE OF NEW JERSEY, SOMERSET COUNTY, } ss.

I, William Ross Jr., Clerk of said County, and Clerk of the Circuit Court and Inferior Court of Common Pleas of the County of Somerset, do hereby certify that the foregoing is a true copy of the written consent and affidavits, relating to the bonding of Bernards Township, filed in the office of the Clerk of said County, on the first day of September, A. D. 1869.

In witness whereof, I have hereunto set my hand and affixed the seal of said County, this twenty-first day of February, A.D. 1874

[L.S.]

William Ross, Jr.
Clerk

109-2nd

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 97.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET AND STATE OF NEW JERSEY, *Appellants*,

vs.

THOMAS H. MORRISON AND GARDNER S. HUTCHINSON, SURVIVORS OF THOMAS A. MORRISON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

HOLBROOKS' STEAM PRINTERY, 11 Mechanic St., Newark, N. J.

United States Supreme Court.

THE INHABITANTS OF THE TOWNSHIP OF BERNARDS, IN THE COUNTY OF SOMERSET,
Appellants.

vs.

THOMAS H. MORISON AND GARDNER S. HUTCHINSON, Survivors of Thomas A. Morison,
Respondents.

On Appeal.

Brief for Respondents.

This is an appeal from the final decree of the Circuit Court of the United States, for the District of New Jersey in equity, made Sept. 23, 1879. (Record, p. 74).

The bill was filed May 8, 1876. (Record, 8).

STATEMENT OF THE CASE:

The respondents, complainants below, citizens of the State of New York, jointly with Thomas A. Morison, whom they have survived, were owners on and prior to May 5, 1874, of sixty-nine coupon bonds, or instruments purporting to be such, given by the appellants, a municipal corporation of the State of New Jersey, in various amounts, through commissioners, the principal of all such securities being twenty-six thousand one hundred dollars ($26,100.) (See Record, 16–71).

Coupons for interest upon these bonds having fallen due, and being unpaid, Morrison & Co., May 5, 1874, brought suit in the Circuit Court of the United States for the District of New Jersey against the municipality by its corporate name of "The Inhabitants of the

Township of Bernards, in the County of Somerset," to recover the amount of the same. (Record, 17–18).

The action, following the forms of New Jersey, was in debt for $10,000. The actual interest due at the beginning of the suit was over $5,000.

To this action after a demurrer, which was over-ruled, the township, by leave of the Court, pleaded: That the bonds, for coupons upon which suit was brought, were not the deed of the township, and it appeared on inspection, (Record, 18), that, although each security in its attestation clause declares that it had been *sealed* by the commissioners, and is duly signed by each commissioner, yet, in point of fact, no seals are found thereon.

Thereupon, the respondents filed their bill on the equity side of the same Court, in which, after alleging the above facts, and showing the legality of said instruments, they allege (Record 18, par. 30), "that said bonds were taken and held without knowledge of this defect; that the omission to seal them was a mere mistake of the officers; that they were issued in pursuance of the power and authority reposed in them, and in perfectly good faith; that the township had secured the full benefit and consideration intended by law; the failure to affix seals was accidental oversight and contrary to the intent of all parties, and that the complainants bought the bonds in open market for their then market price.

They insisted that any allegation of want of seals to the bonds is inequitable; that they are entitled to have them regarded as valid as if actually sealed, and are entitled to have them reformed by affixing the seals. They prayed such a decree, and also that the township be enjoined from setting up against the bonds, or their coupons, that they were not sealed, or were not the deed of the township. (See Record, 18–19).

After answer filed and proof taken, decree was made according to this prayer. (See Record, 55). And from this decree this appeal is taken.

I.

The instruments in question were purchased in open market, at the then market price—about 85c. to $1—from brokers, with whom they

were left for sale by the "Passaic Valley and Peapack Railroad Company" (afterwards called the West Line Railroad Company), and each buyer swears that he did not see or know of the commissioners having failed to affix their seals.

See evidence:

William Parker (Record, pp. 47 to 59).
Gardner S. Hutchinson, do., pp. 59 to 67.
Theodore M. Delany, do., 67 to 71.
William Parker, do., 70.

The absence of seals was a mere oversight. See the testimony of the surviving commissioners, Oliver R. Stelle (Stebbins' case, record, p. 156, John Guerin, p. 170).

The case would then seem to be ruled by Draper v. Springport, 104 U. S. Rep. S. C. p. 501.

Says his Honor, Mr. Justice Bradley, delivering the opinion of the Court, after reciting the act under which the bonds were issued, which seems almost to be a rescript *mutatis mutandis* with the New Jersey act under which the bonds were issued.

"The plaintiff purchased the coupons on which the suit was brought, in the ordinary course of business, in good faith, and for a valuable consideration.

"It is apparent from the law that the substantial thing authorized to be done on behalf of the town is aid of the railroad company in the construction of its road, by subscribing to its capital stock and issuing the obligations of the town in payment thereof. The technical form of the obligations was a matter of form rather than of substance. The issue of bonds under seal as contradistinguished from bonds or obligations without a seal, was merely a directory requirement. The town indeed, had no seal, and the individual seals of the commissioners would have had no legal efficacy: for the bonds were not their obligations, but the obligations of the town; and their seals could have added nothing to the solemnity of the instrument. * * * * * * * We cannot agree with the courts of the State, that the form of a seal was an essential part of the transaction."

The regulations as to forms of pleading and proofs in the State

of New York rendered it unnecessary there to file any such bill as that of the complainants in this case. There no special forms of action are requisite, nor is there any technical plea of *non est factum*. The common law system of New Jersey required that the plaintiff in the action of 1874 should produce bonds—that is to say, instruments under seal.

Hence the necessary resort here to a bill for reformation of the securities, and for an injunction against this inequitable, though, probably, legal, defense.

That the particular defect of a want of sealing may be reformed, and its being set up as a defense enjoined, is shown by the following cases:

Wadsworth v. Wendell, 5 Johns. Ch., 224.
Montville v. Haughton, 7 Conn., 549.

In both these cases the want of a seal was remedied, or the objection thereon founded overthrown.

In the first, though the conveyance was held defective as a legal conveyance, Chancellor Kent decreed it to pass all the title, *in equity*.

In Montville v. Haughton, where the seal of a bond was omitted by mistake, C. J. Daggett decreed to reform and supply the defect.

Every species of mistake is remediable. A deed made by mistake to secure A was amended to secure B. McCall v. Harrison, 1 Brock, 126.

A partition deed, omitting a tract, has been reformed by its insertion.

Filton v. Tilton, 9 N. H., 385.

Absolute deeds made to be mortgages when so intended.

1 Day, 139.

A sheriff's deed amended.

4 Johns. Ch, 85.

A bond will be corrected even against sureties.

2 Hay, 33.

See other illustrations in

Crosby v. Middleton, Pree in Ch., p. 9.

Skip v. Huey, 3 Atk., 93.
Smith v. Chapman, 4 Conn., 344.
Watson v. Wells, 5 Conn., 46.
Peters v. Goodrich, 3 Conn., 146.

See in New Jersey, the following cases.

Hendrickson v. Ivins, Sax., 562.
Wintermute v. Snyder, 2 Gr Ch., 489.
Durant v. Bacot, 2 Beas., 201 ; 2 McC., 411.
Loss v. Obrey, 7 C. E. G., 52.
Chetwood v. Brittin, 1 Gr. Ch., 438.
Smith v Allen, Sax., 43,

and others cited in 1 Stewart's Dig., p. 393 ; title, *Equity*, II., *c*.

The bill in equity is but a piece of machinery requisite by New Jersey law, to effectuate what in New York can be made effectual in the suit upon the bond or the coupons by a simple answer. The decision in *Draper v. Springport*, which decides such an answer good, validates the bill and the decree rendered thereon.

II.

This decision renders it needless to pursue the line of argument followed in the court below on the part of the appellants here, and which is repeated. But it may, however, be advisable.

That argument was two-fold. It was said:

1. That the execution of these instruments was not the making of a contract by the township through its agents, but merely the discharge of a power by the commissioners, and that equity would not give relief against the defective execution of a power.

2. That equity will not relieve parties who come into court saying, We took these instruments as *bonds* when they were without seals.

As to the 1st point, we answer—

A. The execution of these instruments *was*, not merely the discharge of a power by commissioners, but the making of a contract by the township through its agents.

B. If but the discharge of a power, still equity will relieve.

Taking the last first, San Antonio v. Mehaffey, 96 U. S., 315, is apparently exactly in point.

The cause of action was certain "bonds," as they are termed, and coupons issued by the City of Antonio in payment for stock of the San Antonio & Mexican Gulf R. R. Co. subscribed for by the city.

As in the case here, there was a condition of the subscriptions. It was that two-thirds of the qualified electors of the city should vote in favor of it.

The bonds had a recital of this authorization, but the road was not built, and the enterprise was abandoned.

The Court say, "the city was estopped by the recital on the face of the securities, to deny its verity. A bona fide purchaser had a right to regard it as true, and was not bound to look further."

The principal securities delivered to the company were not bonds, because they were *unsealed*. But this is immaterial. The twelfth section, under which they were issued, expressly declared that those charged with the duty of subscribing "may issue bonds bearing interest or otherwise pledge the faith of the city."

The securities issued were within the latter category. "*If that clause was wanting, we should have no difficulty in holding that the city was, under the circumstances, estopped from denying their validity.*"

It seems that in the act under review, there were "persons charged with the duty of subscribing." Who they were the opinion does not state. It would appear that they were not the ordinary officers of the city.

This case, though not quoted, is but followed by the Court in *Draper v. Springport*.

By itself, it should close the argument. In it, as in this now before the Court, there were instruments given in exchange for stock in a railroad company; intended to be sealed, but, by oversight, unsealed; issued by certain individuals charged with that duty, whose right to do it, depended upon the condition of a vote authorizing it.

And the doctrine of estoppel was applied and justified, even if there had been no authority otherwise than by bonds to pledge the faith of the municipality.

In other words the Court asserted not only the doctrine of estoppel through recital, but that of estoppel *in pais*, as governing the case.

Commissioners of Johnson v. Janeway, 94 U. S. 202, is also instructive.

The bonds mis-recited the act under which they were issued. They referred to a wrong statute. There was no such statute as that to which they referred for their origin.

The Court said p. 206, "the principle of estoppel applies, and it precludes the obligor from interposing such a defense."

Estoppel, not through recital, but estoppel *in pais*, operated. It was inequitable that the municipality should issue negotiable securities, and then, against bona fide holders, assert an informality.

On principle, the bonds in this case were as void as if they wanted a seal. For they said that they were issued in pursuance of a law when there was no such law. The taker was held to know the law. The principle is as imperious as that which implies notice of the want of a seal.

So the case decides that an instrument on its face void, if issued by a city and imposed for value on bona fide holders, will be held good for their benefit. It was virtually *reforming* the bonds, amending them in a vital matter.

But recurring to the proposition stated, I proceed to show that the execution of these bonds was not merely the discharge of a power by commissioners. It was the making of a contract by the township through its agents.

The act under which these bonds were issued is printed in complainants' brief, p. 2.

The last case, Johnson v. Janeway, 94 U. S., 206, bears strongly on the question. There "commissioners" signed the bonds. A prior popular vote was necessary and was had. The court say,

"the act of the commissioners was the act of the county, and the county is conclusively bound by what they have done. As between the county and a *bona fide* holder, no question involving the infirmity of the securities can be raised."

And again (on p. 205.) "the road was finished, and has since been in operation. The county and its inhabitants are in the enjoyment of the benefits arising from it. There is no imputation of fraud on either side. The plaintiff is the *bona fide* holder of the bonds. A case of stronger equity can hardly exist."

Now let reference be made to the act, authorizing the bonds in suit.

Its first section authorizes the Circuit Court of the county to appoint three freeholders, to be commissioners *for such township*, to carry into effect the purposes and provisions of this act, "who shall *hold their offices for the term of five years*, and until others shall be appointed."

I emphasize that they are officers for the township, and *permanent officers*, and others may be appointed after five years.

Section 2 makes it lawful for these commissioners to borrow, on the faith and credit of their respective townships, a certain defined sum, and to execute bonds therefor, under their hands and seals, respectively, but no such debt shall be contracted or bonds issued, until the written consent of the majority of tax-payers, &c., shall be obtained; and this consent is to specify the sum, and that it is to be invested in the stock of the railroad company.

Section 3 bids the commissioners dispose of the bonds, or any part thereof, and invest the money—"the commisioners, respectively, in the *corporate name of each of their townships*, shall subscribe for and purchase stock," &c., by which the townships acquire rights of stockholders—the commissioners representing them at all stockholders' meetings, and having the right, if elected directors, to serve.

Section 4 directs the commissioners to report to the township committee, annually, the amount required to pay interest or principal that year. They are to apply dividends, and, for any difference, to cause assessment on the landed estate.

By section 5, the railroad company may agree with the commis-

sioners, "in behalf of their respective townships," to pay the annual interest "on the bonds *issued by such township*, for three years, or until the railroad shall earn dividends equal to interest."

By section 6, the commissioners may exchange stock for the bonds issued, or sell it at par; but the sale *requires consent, as in Section 2*, and the proceeds are to be used by the commissioners in extinguishing the bonds.

By section 7, after twenty-five years, the assessors are to raise the principal, etc., according to the report of commissioners.

By section 9, they make official bonds in an amount equal to the amounts to be issued to said townships, the sufficiency of sureties to be determined by the township committee or by the circuit judge.

By section 10, vacancies may be filled.

By section 11, their pay and disbursements are provided for, "to be paid by the township committee the same as other township expenses."

By section 12, the commissioners make a board "to act for their townships respectively."

Consideration of the act justifies the allegation that the commissioners are agents for the township in this particular matter—having discretionary powers—as much agents as are the "township committee;" confined, it is true, to the management of this particular matter, but having even more important duties. They determine the question of borrowing and investing. The consent of the taxpayers is to be obtained. But the language of the act does not *require* their action in conformity with the consent. They issue bonds, verifying by their signatures and seals; they pledge the faith and credit of the township; they act on behalf of the township; they are a board, "to act for the townships respectively;" they continue for long terms; and till successors are appointed, they execute the will of the township, as shown by the consent of a majority of its taxpayers.

Morrison vs. Bernards, 7 Vroom, 219, decides the bonds to be given by the township.

The "township committee" are the legislative body, so to speak, though themselves with narrow scope in ordinary matters. This

board are possessed of kindred powers, but on this one matter each derives its authority from statutes. Both boards are agents of the township.

They are so, "to pledge the faith and credit" of the township. The township acts through them. To invest the township committee with such power, would have needed a statute. To invest these commissioners with it requires the same. Had the township committee been deputed to pledge the faith and credit of the township, would any one have contested their agency? Then why do so when other officers are thus deputed?

The law, in one form of machinery, appoints a township committee, who represent the township as to certain matters. By other machinery the same law appoints a special committee, so to speak, charged with the duty and invested with the power of representing the township in other matters. And to make it more abundantly evident that in this matter this commission, this board, shall represent the township, it provides that before they act a majority of the taxpayers (a larger body than the voters) shall, in writing desire their action.

It seems to me that this board are really more clearly representatives of, and agents for, the township than the township committee itself.

The continuance of them in office; voting upon the stock of the township; representing them, if elected, on the board of directors; the various character of their duties: first, to raise money; then to buy stock; then to represent it; then, if need be, to sell it; to receive dividends, pay interest, etc, etc.; the imposition of these duties makes it clear that the board are agents and representatives of the township.

Had they been simply officers to make bonds, they would, under this act, have still pledged the faith and credit of the township as its agents and representatives. But the argument is much stronger when they remain trustees in charge of the whole matter for twenty-five years or more.

May it not be fairly urged that even if this be regarded as simply a defective execution of a power, still equity will reform the instruments?

The rule is (1 Story Eq. Jur., § 169,) that if a trust be coupled with a power, the trust will be enforced notwithstanding the force of the power does not execute it. If there be a defective execution or attempt at execution of a mere power, equity will interpose and supply the defect, in favor of the parties for whom the person intrusted with the execution of the power is under a legal or moral obligation to provide by an execution of the power. Thus, such a defective execution will be aided in favor of persons standing upon a valuable or meritorious consideration, such as a *bona fide* purchaser, unless, indeed, such aid of the defective execution would, under all the circumstances, be inequitable to other persons, or it is repelled by some counter equity.

This, if it must be regarded as a case of execution of power, is clearly one of a defective execution, and not of a non-execution. The power was to raise money by the issue of bonds, in order to the acquisition of stock in the R R. Co. The power, if that were all, was partially executed. The end was attained, but there was a slip—a defect in the form of execution of one part of the duty. And this was the act of a person who not only wielded a power, but discharged a trust—a trust to raise money, expend it in a specified way, represent it afterwards, and finally provide for its re-payment.

It is no matter that this was for the public. It was a financial trust, the benefit of which was to be attained by private property, conferred upon certain officers, in order to the attainment of special benefits. One part of the trust was the borrowing money by the issue of these bonds; and in discharging it, these parties have, by mistake, defrauded *bona fide* purchasers. It seems to me that every reason makes the reformation proper.

The equity seems to be all upon one side. These bondholders have defrauded no one. If the taxpayers are injured, was it not their own fault? at least, not the fault of the complainants. But it is not the taxpayers, but that aggregation called the township, whose equities are to be considered. And the date of the transaction is the time when, if at all, it acquires an equity. What equity did it not have? Did it not get the stock at par, and was there any wrong done it? What if, afterwards, the stock, by mis-

management of the company, was rendered worthless? Did not their representative participate in the management? Had they not all the power to protect themselves and prevent fraud, which any stockholder possessed?

Suppose any individual had bought this stock, and issued his bonds in payment, would he be permitted, because of subsequent misfortune and change in values, however occasioned, to set up that his intended bonds lacked seals? And if not, why shall a township?

It was suggested that an advantage, through their being merely written contracts, was in the possession of the township; that they were freed from the operation of estoppel, and that reforming the bonds would rob them of a right to which they were equitably entitled. But it is observable that it will do more. It will enable the township successfully to deny any responsibility. We must make these papers bonds, or fail entirely.

And why should the townships not be estopped? If it were not that the statute requires bonds—and it might have been content with less formal instruments – if only they were negotiable, all the equity on which estoppel is founded would exist. It might not be through estoppel, but a court of equity would certainly not permit a *bona fide* purchaser without notice and for value, to lose his money.

Our status in this court is, that we are bona fide purchasers in open market for value of securities intended to be bonds—that we have paid our money in good faith—how can the party who got value for these bonds be protected a moment in equity, when seeking immunity, by saying there was a mistake—a forgetfulness—an ignorance; and so, though we said we sealed the papers, it was not so—wherefore we claim to escape our intended obligation.

In this connection I cite Jones on Railroad Securities, sections 280, 281, 282, and the cases cited in the notes, establishing three propositions— 1. That a municipality is estopped not only by recital under seal, but by its course of dealing from setting up as defence, irregularity in the exercise of the power of issuing bonds.

See Rogers v. Burlington, 3 Wall. 654.
Bissell v. Jeffersonville, 24 How. 287.
Supervisors v. Schenck, 5 Wall. 772.

2. A municipality may be estopped by its acts from taking advantage of irregularities in the vote authorizing a subscription.

Railroad Co. v. Chatham, 42 Conn. 465.

3. Municipalities may become bound to pay bonds issued in its name by paying interest or by holding stock received for bonds or by other acts.

County of Ray v. Vansyckel, 96 U. S. 675.
McKee v. Vernon, 3 Dill. 210.
Munson v. Lyons, 12 Blatch. 539.

It is to be remembered that before these bonds were issued, they were not only registered in the County Clerk's office, but copies of the proceedings were deposited for filing with the clerk of the township, that interest was paid on them, and stock held, voted upon, and represented.

I proceed to the second objection. A court of equity will not relieve parties who come into court, saying: We took these instruments as *bonds*, when they were without seals.

The two cases cited, that from 5 Johns. Ch. R., and that from 7 Conn., say otherwise. So does the judgment of the Supreme Court through Mr. Justice Swayne, in San Antonio v. Mehaffey, 96 U. S. 315.

Is not Hunt v. Rousmanier, 8 Wheat. 174, misapprehended? On p. 210 Chief Justice Marshall states the question to be, "if money be advanced on a general stipulation to give security for its repayment on a specific article, and the parties deliberately, on advice of counsel, agree on a particular instrument, which is executed, but, from a legal quality inherent in its nature, that was unknown to the parties, becomes extinct by the death of one of them, can a court of equity direct a new security of a different character to be given, or direct that to be done which the parties supposed would have been effected by the instrument agreed on between them?"

This question he discusses at length, and concludes (p. 216) thus: "In this case the fact of mistake is placed beyond any controversy. It is averred in the bill, and admitted by the demurrer, that the powers of attorney were given by the said Rousmanier and received by the said Hunt, under the belief that they were and with the

intention that they should create a specific lien and security on the said vessels.

"We find no case which we think precisely in point, and are unwilling, where the effect of the instrument is acknowledged to have been entirely misunderstood by both parties, to say that a court of equity is incapable of affording relief. The decree of the Circuit Court (dismissing the bill) is reversed; but as this is a case in which creditors are concerned, the court, instead of giving a final decree on the demurrer in favor of the plaintiff, directs the cause to be remanded, that the Circuit Court may permit the defendants to withdraw the demurrer and to answer the bill."

This decision was therefore in our favor, not against us. The hesitation of the Court arose because the mistake was one not of fact but of law. It was believed that the legal effect of the instrument given was better than to mortgage. The Court held the law otherwise, and the death of the party avoided the instrument and put the rights of the other in jeopardy. Even then the Court gave relief. But in the case on trial, the mistake was one of fact. Both parties intended to seal. The commissioners declared they had sealed. The parties supposed it true. C. J. Marshall would not have hesitated here.

Negligence and carelessness on the part of a complainant is no defence, where no injury is done the other side; where no rights have intervened. Taking the case of the Duke of Beaufort v. Neeld, cited below as illustrative, the Lord Chancellor says (12 Cl. & Fin. 274): "If the duke himself has incautiously signed this instrument, is the party dealing with the duke to suffer, or the duke who has himself compromised his own interest by his incautious proceedings? Undoubtedly the duke."

And, again: "If the duke does not choose to make inquiry—if he does not choose to exercise ordinary caution, but puts his signature to the instrument, giving authority to the commissioner to proceed in his name and act upon his interests; and if the commissioner acts upon that authority and *other parties deal with the commissioner*, and the exchanges go on and are completed, it appears to me rather a strong proposition that the duke is not bound by the act of the commissioner, that act being founded on his written consent."

It is not true that equity refuses to interfere in behalf of the careless, simply as a penalty, or from dignity, or any motive having their carelessness solely in view. Its refusal is always based upon the rights of others, supervening or intervening, which gives them an equity to say the mistake has misled them, or become the basis of their conduct, and so it cannot be regarded.

Every case on this subject will be found to contain this element —rights of others, which will be inequitably affected if the carelessness is relieved.

Now, what equity has this township? All it sought, or had a right to seek, was the stock in this railroad company. Every risk as to its management, as to the demand for it, as to the times and the money market, it expected to take. It had no other possible profit than the stock. *This it gets;* and, in exchange for it, instruments are given, which the givers style bonds, and say they have sealed, and which the takers thought to be bonds and to have seals. But, what harm to the township results? What to any one else?

But was there negligence? Yes; just such as happens constantly and daily in regard to this class of security. There is no time for sharp examination, nor is any reasonably practicable. (Record, 70).

The negligence is ordinary, not gross, and it is without wrong or harm. Seals, nowadays, are often mere stamps, invisible, without care.

But negligence has nothing to do with the question. We ask for our contract. They admit it was our contract. Equity will not allow them to have the stock which represents our money, and to refuse, because of informality, to pay the bonds which procured it.

III.

Much argument was made below on the ground of a want of conformity to the statute prior to the issue of these bonds; and on the ground that the commissioners bought the stock of the railroad company with the bonds, instead of selling the bonds, and with the money buying the stock.

The first ground is met by the doctrine of estoppel, as often settled in this Court in similar cases—estoppel by recital and estoppel *in pais*.

The recital is "this bond is issued on the faith and credit of said township in pursuance of an act" &c., p. 13.

As to the effect of this, see

Moran v. Commissioners, 2 Black., pp. 726, 731.
Harter v. Kernochan, 103 U. S., 563, 569, 570.
Pompton v. Cooper Union, 101 U. S., 264.
Knox v. Aspinwall, 21 How. 539.
Coloma v. Eaves, 92 U. S., 490.
Vanile v. Murdock, 92 U. S., 494, 495.
Bonham v. Needles, 103 U. S., 650.

The second ground is covered by

Meyer v. Muscatine, 1 Wall., 384.
Rogers v. Burlington, 3 Wall., 654.
Converse v. Fort Scott, 92 U. S. 503.
Scipio v. Wright, 101 U. S. 665.
Montclair v. Ramsdell, 2 Sup. Ct. Rep. 402.

The act is directory. The object is to build a railroad, by having the township through which it passes take its stock. To get that by the circuitous path of first issuing bonds, then selling them at par, then buying the stock, cannot be necessary. If the company is willing to issue its stock and take the municipal bonds in payment, who shall say, nay? If the company lent the money on security of the bonds to the township, they would get it back at once when the township bought their stock. Why not do the thing directly—sell the stock for the bonds?

That is what was done.

It is really obedience to the act.

IV.

A single objection remains:

It is stated in the answer (Record, 27): "This defendant, on information and belief, denies that the said complainants are owners in their own right of any of the bonds of which they claim to be holders; that, whatever of said bonds they may hold, they hold

only as custodians or depositaries for other persons, all or nearly all of whom are residents and citizens of New Jersey, who have lodged their said bonds with the complainants to the end that said complainants may bring suit thereon in this Honorable Court for the use and benefit of the real owners of said bonds."

1. It is submitted that if this were true it sets up no defence—either against the complainants as to their own bonds—or against bonds held by them as trustees.

If it were intended to ground a defence upon the fifth section of the act of March 3, 1875, it is insisted that the answer should have pleaded the act, and alleged the facts necessary to its application.

2. But it is to be observed that the suit in equity now before the court is only auxiliary to the suit at law upon the coupons, which latter action was brought May 5, 1874—nearly a year before the statute of 1875; hence the statute could not, and did not apply to it. It was not in its terms retrospective, and will not be so construed.

And the suit in equity being intended to give effect to that at law, by decreeing a prevention of an inequitable defence, is to be regarded as simply a continuance of the original litigation. The plaintiffs in the equity suit were necessarily the same, and the relief sought and granted must be necessarily as extensive as the scope of the suit at law. The plea was *non est factum* to all the bonds sued upon. The relief which had to be invoked was an injunction of that plea as to all.

For illustration of the principle that such litigation, cross-bills and the like, instituted in aid of a pending suit is only its continuance, see:

Dunn v. Clarke, 8 Peters, 1.
O'Brien Co. v. Brown, 1 Dill. 588.
City Bank v. Skelton, 2 Blatchf. 26.
Curtis Co. v. Tannhauser, 9 Fed. R. 225.

If it be true, as held in Cooper v. Thompson, 13 Blatchf. 434, that coupons are promissory notes within the exception of the act

of 1875, then the anomaly would occur that this objection can be made to the ancillary suit, though forbidden in the principal one. And see Lexington v. Butler, 14 Wall. 293.

It is worth while to inquire as to these bonds more in detail:

Of the sixty-nine bonds in suit, there belonged to complainants, citizens of New York, eleven bonds	$10,000 00
James E. Clark, a citizen of Pennsylvania, two bonds.	2,000 00
S. S. Van Laren, a " " New York, three bonds..	1,500 00
Samuel P. Bell, a " " " " five bonds....	500 00
T. M. Delany, a citizen of Pennsylvania, eight bonds.	6,000 00
L. Fullager, a citizen of New York, three bonds.....	1,500 00
H. G. Manahan, a citizen of New York or West Virginia, five bonds	500 00
M. E. Halsey, a citizen of New Jersey, thirty-two bonds	5,000 00
Israel Ward, a citizen of New Jersey, one bond.....	100 00
Suit upon bonds of plaintiffs	10,000 00
Suit upon bonds of other persons, not citizens of New Jersey	12,000 00
Suit upon bonds of citizens of New Jersey	5,100 00
The suit at law was for recovery of coupons upon plaintiffs $10,000.00	1,800 00
Do. upon bonds held for other persons out of the State	2,160 00
Do. upon bonds held for persons in the State of New Jersey	918 00

I remark—

1. The complainants had a clear right to come to the U. S. Circuit Court on their own behalf. They were citizens of New York, and the party they sued was a corporation of New Jersey, and their bonds were for $10,000, their coupons $2,160. Both in virtue of residence and amount of controversy, they were entitled to that forum.

2. All the individuals owning the $12,000 worth of bonds had a similarly clear right. They were citizens of other States than

New Jersey, and each owned bonds amounting to $500, on which interest had accrued.

James E. Clark's bonds were in all for	$2,000 00
S. S. Van Laren's for	1,500 00
Samuel P. Bell's for	500 00
T. M. Delany's for	5,000 00
L. Fullager, for	1,500 00
H. G. Manahan, for	500 00

See Record, pp. 60–61.

It is apparent, therefore, that the "purpose" for including these bonds as the foundation of the equity alleged in this suit was not "of creating a case cognizable under the act" of 1875.

Each party originally had such a case, and though it may be true that M. E. Halsey, of New Jersey, with *his* bonds, amounting together to $5,000, and Israel Ward, of New Jersey, with *his* bond for $100 could not have sued in the U. S. Circuit Court, yet, with this large capacity of suit in the complainants, no one can impute to them the purpose of "creating a case cognizable under the act," when the addition of their bonds only increased the pecuniary importance of the suit, which would have been brought and continued, whether these Jersey bonds were represented in it or not.

Clearly, the case is not within the *language* of the act.

That language is as follows:

"If, in any suit in a circuit court, * * * * * it shall appear to the satisfaction of said circuit court, at any time, that * * * * * * the *parties* to said suit have been improperly or collusively made or joined as plaintiffs or defendants for the purpose of creating a case cognizable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit."

Here is no joinder of parties for any purpose. Here is no purpose of creating a case cognizable under the act.

Here is no "improper" conjunction of parties. Nor is there any "improper" consolidation of interests.

The motive and purpose was economy: of time and money to

several parties having like interests: of time and trouble to the Court: of expense to the Government, which defrays the cost of courts, and of their terms.

The principle expressed in the maxim, "*Interest reipublicæ ut sit finis litigationis*," does not only palliate, but justifies the adoption of a means to lessen litigation by incorporating many controversies of the same identical nature in one.

If the complainants had, as they might have done, sued on each $500 worth of these bonds in separate suits, the Court would have ordered consolidation of them all into one. If this be so, will the Court dismiss the suit, or distinguish between the claims represented, because they were consolidated from the beginning?

The strong sense of Mr. Justice McKennan rejected this alleged defence as soon as made, and led him rather to approve than disapprove what was done.

I am quite aware that this matter may be claimed to be *res adjudicata*. But it is not. The facts in Williams v. Notawa, 104 U. S. S. C. 210 were very different:

Williams owned but $300 worth of bonds. He could not sue in the United States Supreme Court. One Tobey owned $300 more. *He* could not sue. Kline owned bonds. But he was a citizen of the same State with the defendants, and, therefore, could not sue. Connor owned bonds likewise. But he was a fellow-citizen with Kline, and could not sue. So, "to create a case cognizable under the act," all these parties colluded; the other owners put their bonds in the hands of Williams, who thus appeared to own more than enough to give pecuniary jurisdiction, and brought the suit.

Each party was guilty of the purpose forbidden by the act. Williams, only owning $300 worth of bonds, could not sue unless he had the bonds of Tobey, or of Kline, or of Connor, or some of them. Tobey could not get his bonds before the Court, nor could Kline or Connor, without combining with Williams. And so, there was a plain attempt to "*create*" a jurisdiction. The Court could not do otherwise than dismiss the suit.

But if Williams had had enough to get jurisdiction for his suit, so that there was no suit to be *created* by the combination of interests in one man, no such decision would have been called for.

The intent of the section is to prohibit fraud upon the jurisdiction—the *falsely creating* a jurisdiction. When that jurisdiction already exists, assignment to swell the amount of the controversy is far from objectionable. It lessens litigation, and economizes time, thought, labor, and expense.

A statute of this sort invades the application of the maxim, "*Boni judicis est ampliare jurisdictionem.*" It is respectfully suggested that nothing should be construed as within the law which does not come within its language. Nothing should be imported into the act, because it would seem to be within the mischief it sought to remedy.

The decision in the case of Williams v. Notawa was within the language of the act. Williams was "*made* a party to that suit for the purpose of creating a case cognizable," &c. But if Williams had been a qualified party, nothing in the language of the act forbids the assignment to him by legal means of larger interests; nor, it is submitted, does such an assignment to an already competent party fall within the mischief sought to be remedied. That mischief is, "*creating a case cognizable*," and nothing else.

Kline and Connor did *create* such a case when they assigned to Williams, for Williams alone had no right of action in the Federal forum. But had Williams possessed this right, would the assignment have *created* the "cognizable" case?

It would not have done so by *making* a party, for the party would have already existed. Nor would it have done so by *joining* a party, for there was no second party.

If it "created a case" for them, Kline and Connor, it would not have been by either making a party or joining a party, and so would not have been an infraction of the act.

V.

The brief of the appellants', served during the preparation of this, sets up a ground of appeal, novel, both in itself, and

as a feature of this controversy. It is, that there was no right in the commissioners to make *coupon* bonds, and no power to bind the township by coupons.

What then? What answer is it, if the proposition be true, to the bill of complaint, or its prayer?

The bill prays reformation of the bonds by affixing seals—and injunction against pleading *non est factum* to the *bonds.*

How is this answered by saying, the township is not bound by the *coupons?*

Nor is there any trace of such a defence in the answer filed in the cause.

We will take care of that when the case is tried at law.

But a power to borrow on interest authorizes the making of a promise to pay that interest. And a coupon is no more. It is but a repetition in separate form of the contract made by the bond. That instrument agrees to pay the principal, with interest, every six months, to the bearer of it. The coupon re-affirms that contract as to the interest, and that is all.

Such bonds are favorite securities. Hence the preference by trustees, the principal of whose duties was to borrow. The imposition of that duty authorizes the selection of any known style of security.

The right of a municipal corporation having authority to issue bonds drawing interest, payable at stated intervals, to attach coupons thereto, themselves negotiable, is settled by authority.

See Town of Cicero v. Clifford, 53 Ind., 191.
Amey v. Alleghany City, 24 How., 364.
Commonwealth v. Pittsburg, 34 Pa. St., 496, 511.
Same v. Same, 41 Pa. St., 278.

VI.

I forbear to remark upon the various objections taken in the pleadings, and on argument, to the formalities preceding the issue of the bonds. The decisions of this Court declare that the defendants, appellants here, are estopped from alleging them. But should they be considered I adopt and rely upon the argument and brief of the learned counsel for Stebbins & als., respondents in the case argued with this, being No. 96 upon the present list, in regard to this as to all other branches of the subject.

CORTLANDT PARKER,

of Counsel for Respondents,

THOS. H. MORISON & ALS.

109-341

OFFICE SUPREME COURT U. S.
FILED
NOV 2 1883
JAMES H. McKENNEY, Clerk.

CHARTER AND SUPPLEMENTS

OF THE

New Jersey West Line

RAILROAD COMPANY.

CHARTER AND SUPPLEMENTS

OF THE

New Jersey West Line

RAILROAD COMPANY.

DIRECTORS.

John H. Lyon,	Bennington F. Randolph,
Daniel D. Craig,	J. B. Bassinger,
Samuel B. Smith,	John H. Anderson,
Charles N. Lockwood,	James Alward,

Jarvis Johnson.

OFFICERS.

John H. Lyon.....*President.*

.....*Vice-President.*

Daniel D. Craig.....*Treasurer.*

Beverly C. Sanders...*Secretary.*

J. B. Bassinger.....*Engineer.*

STATE OF NEW JERSEY.

AN ACT

ENTITLED "AN ACT TO CHARTER THE PASSAIC VALLEY AND PEAPACK RAILROAD COMPANY."

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That Morris P. Crate, Cornelius W. Schomp, John H. Anderson, Alvah Lewis, John Littell, J. O. Maxwell, Nathaniel Bonnell, Joseph Alwood, and James W. Arrowsmith, and such other persons as may hereafter be associated with them, shall be and are hereby ordained, constituted, and declared to be a body corporate and politic in fact and in name, by the name of the "Passaic Valley and Peapack Railroad Company;" and by that name they and their successors and assigns shall and may have continual succession, and shall be persons in law capable of sueing and being sued, pleading and being impleaded, answering and be answered unto, defending and being defended in all courts and places whatsoever; and shall have power to make and use a common seal, and the same at pleasure to alter; and they and their successors, by the same name and style, shall be capable of purchasing, holding and conveying any lands, tenements, goods and chattels whatsoever, necessary or expedient to the object of this corporation.

2. *And be it enacted*, That the capital stock of said company shall be twelve hundred thousand dollars, with liberty to the said company to increase the same to two millions of

dollars, and shall be divided into shares of fifty dollars each, which shall be deemed personal property, and shall be transferrable in such manner as the by-laws of the said corporation shall direct.

3. *And be it enacted*, That the above named persons may open books to receive subscriptions to the capital stock of said corporation, at such time or times, and place or places, as they or a majority of them may think proper; and at the time of subscribing for said stock, five dollars on each share subscribed shall be paid to said commissioners in gold or silver coin, or legal and current bank notes; that whenever there shall be three thousand shares of the said stock subscribed, the said commissioners may give notice for a meeting of the stockholders to choose nine directors; and such election shall be made at the time and place appointed by such of the stockholders as shall attend for that purpose either in person or by lawful proxy; each share of the capital stock entitling the holder thereof to one vote; and the said above named persons, or a majority of them, shall be inspectors of the first election of directors of the said corporation, and shall certify under their hands the names of those persons duly elected, and deliver over the subscription books to the said directors; and the time and place of holding the first meeting of directors shall be fixed by the said persons named in the first section of this act, or a majority of them; and the directors chosen at such meeting, or at the annual election of said corporation, shall, as soon as may be after every election, choose out of their own number a president; and in case of the death, or resignation, or removal of the president or any director, such vacancy or vacancies may be filled for the remainder of the year wherein they may happen, by the said board of directors, or a majority of them; and in case of the absence of the president, the said board of directors, or a majority of them, may appoint a president pro tempore, who shall have such power and functions as the by-laws of said corporation shall provide.

4. *And be it enacted*, That in case it should happen that an election of directors should not be made during the day when, pursuant to this act, it ought to be made, the said

corporation shall not for that cause be deemed to be dissolved; but such election may be held at any other time; and the directors for the time being shall continue to hold their office until new ones shall have been chosen in their places.

5. *And be it enacted*, That the five directors of said corporation shall be competent to transact all business of the said corporation; and shall have power to call in the capital stock of said company by such installments (not to exceed ten dollars on each share any one time), and at such time as they may direct; *provided*, that such installments shall not be called for at a shorter period than thirty days from each other; and in case of non-payment of said installments, or any one of them, to forfeit the share or shares upon which such default shall arise; and to make and prescribe such by laws, rules and regulations as to them shall appear needful and proper, touching the management and regulation of the stock, property, estate and effects of the said corporation; and also, shall have power to appoint a secretary, and so many clerks and servants as to them may seem meet, and to establish and fix such salaries to them, and also to the president, as to the said board shall appear proper.

6. *And be it enacted*, That the president and directors of the said company be, and they are hereby authorized and invested with all the rights and powers necessary and expedient to survey, lay out, locate and construct, maintain and operate a railroad from some point in the county of Union, or the county of Essex, passing through the township of Springfield into the township of New Providence, near the village of New Providence, so up Passaic Valley, at or near Basking Ridge, and so on to the village of Peapack, in the county of Somerset, not exceeding one hundred feet in width, with as many set of tracks and rails as they may deem necessary; and it shall and may be lawful for the said president and directors, their agents, engineers, superintendents, or others in their employ, to enter at all times upon all lands or water, for the purpose of exploring, surveying, levelling or laying out the route or routes of such railroad, or lat-

eral roads, and of locating the same, and to do and erect all necessary works, buildings and appendages thereof, doing no unnecessary injury to private or other property; and when the route or routes of such road or lateral roads shall have been determined upon, and a survey of such route or routes deposited in the office of the secretary of state, then it shall be lawful for the said company, by its officers, agents, engineers, superintendents, contractors, workmen, and other persons, in their employ, to enter upon, take possession of, hold, have, use, occupy, and excavate any such lands, and to erect embankments, bridges, and all other works necessary to lay rails, and to do all other things which shall be suitable or necessary for completion or repair of the said road or roads, subject to such compensation as is hereinafter provided; *provided always*, that the payment or tender of the payment of all damages for the occupancy of lands through which the said railroad or railroads may be laid out, be made before the said company, or any person under their direction or employ, shall enter upon or break ground in the premises, except for the purpose of surveying and laying out said road or roads, unless the consent of the owner or owners of such lands be first had and obtained.

7. *And be it enacted*, That if the owners of the lands on which such railroad or railroads shall be made shall not be willing to give the same for such purpose, and the said company or owners cannot agree as to the price of the same, it shall be the duty of any judge of the inferior court of common pleas of the county in which the said disputed land shall lie, who is disinterested in the premises, upon the application of either party, and after giving ten days' notice, in writing, to the opposite party of such application, and after hearing the parties, to appoint three disinterested commissioners of such county, to assess the price or value of said land, who shall be sworn before said judge, faithfully to execute the duties of such appointment, and after like notice to both parties of the time and place, shall meet, view the premises, and hear the parties, and evidence, if desired, and thereupon make such decision and award as to them shall appear just and proper, and transmit such award and

decision, together with a description of the said land, and the quantity taken, by whom owned, and how situate, bounded, and described, in writing, under their hands and seals, or the hands and seals of a majority of them, to the judge who appointed them, to be by him returned and filed, together with all papers before him relating thereto, in the clerk's office of the county, there to be kept as a public record, and copies taken, if required by either party; and if either party shall feel aggrieved by the decision of such commissioners, the party so agrieved may appeal to the inferior court of common pleas of the county, at the next term after such decision of the commissioners, by proceeding in the form of a petition, to the said court, within five days' notice in writing to the opposite party, of such appeal, which proceeding shall vest in the said court of common pleas full right and power to hear and adjudge the same, and, if required, they shall award a venire, in proper form, for a jury, before them, who shall hear and finally determine the same; and it shall be the duty of the said jury to assess the value of the said lands, and all damages sustained; and if the said jury be demanded by the company, and they shall find a greater sum than the said commissioners, then judgment shall be given, with cost, against the company, and execution issued if need be; but if the said jury shall be demanded by the owner or owners, and shall find the same, or a less sum than the commissioners awarded, then the costs shall be paid by the owner or owners, and shall be deducted out of the said sum so awarded, or execution issued therefor, as the court shall direct, and upon payment or tender of the sum so found by the commissioners, or by the jury, with costs, if any, the said corporation shall be deemed to be seized and possessed, in fee simple, of all such lands and real estate appraised as aforesaid.

8. *And be it enacted*, That in case any owner or owners of such land or real estate shall be feme covert, under age, non compos, out of the state, or under any other legal disability, which would prevent their agreement with the said company, then it shall be the duty of the said corporation to pay the amount of any award or report so made, in behalf

of any such person, into the court of chancery, to the clerk thereof, subject to the order of the said court, for the use of said owner or owners, all of which said proceedings, as well under this as the preceding section of this act, shall be at the proper costs and charges of the said corporation, except in cases of appeal above provided for; and the said judge shall and may order and direct the amount of costs and charges of such valuation, appraisement and witnesses' fees.

9. *And be it enacted*, That it shall be the duty of the said company to construct and keep in repair good and sufficient bridges or passages over or under the said railroad or roads, when any public or other road shall cross the same, so that the passage of carriages, horses and cattle on the said road shall not be impeded thereby; and also, where the said road shall intersect any farm or lands of any individual, to provide and keep in repair suitable wagon-ways over or under said road, so that he may pass the same; and if the company neglect to perform the same, after giving twenty days' notice to the company by the owner or possessors so to do, the owner or possessor may do it himself, and recover the value of the work from the corporation by common process of law.

10. *And be it enacted*, That the president and directors of the said company shall have power to have constructed, or to purchase with the funds of the company, and to place on any railroad constructed by them, all machines, engines, wagons, carriages or vehicles, for the transportation of persons or any species of property thereon, as they may think reasonable, expedient or right; *provided*, they shall not charge more than at the rate of six cents per mile per ton for the transportation of property on the said road or roads, or six cents per mile for carrying each passenger, on said railways, in the carriages of the company, or three cents per mile for each ton of property transported, or three cents per mile for each passenger carried on said railway, in the carriages of others, and three cents per mile for each empty carriage; and that the railroad or roads, and their appendages, and the land over which the same shall pass, and all

the works and improvements, steam-engines, carriages, and all other property whatsoever belonging to the said company, at any time or times, are hereby vested in the said company incorporated by this act, and their successors and assigns, during the continuance of this act.

11. *And be it enacted*, That the president and directors shall within one year after the said railroad shall have been completed, declare and make such dividends as they may deem prudent and proper of the net proceeds thereof, and shall in like manner semi-annually thereafter, declare such dividends, and pay the same to the stockholders of the said company in proportion to the amount of shares held by them respectively, as they may deem prudent and proper.

12. *And be it enacted*, That if any person shall wilfully impair, injure, destroy or obstruct the use of any railroad constructed under the provisions of this act by the said company, or any of their necessary works, wharves, bridges, carriages or machines, such person or persons so offending, shall forfeit and pay to the said company the sum of fifty dollars to be by them recovered in any court having competent jurisdiction in an action of debt; and further shall be liable for all damages.

13. *And be it enacted*, That the said company may have and hold real estate at the commencement and termination of said road or roads, not exceeding five acres at each place, and may erect and build thereon houses, warehouses, machine shops, and such other buildings and improvements as they may deem expedient for the safety of property and construction of carriages, and other necessary uses; and take and receive the rents, profits and emoluments thereof; and shall have the privilege and authority to erect, build and maintain such bridges over all streams of water on the line of the said road as they may think expedient and necessary for the full enjoyment of all the benefits conferred by this act.

14. *And be it enacted*, That as soon as this railroad with its appendages shall be finished so as to be used, the president and treasurer of said company shall file under oath or affirmation, a statement of the amount of the costs of said

road, including all expenses, in the office of the secretary of state; and annually thereafter, the president and treasurer of the said company shall, under oath or affirmation make a statement to the legislature of this state of the proceeds of said road; and the said corporation shall pay to the treasurer of this state a tax of one-half of one per centum on the cost of said road, to be paid annually thereafter on the first Monday of January of each year, and shall be subject to no other tax or impost whatever.

15. *And be it enacted*, That at any time after the expiration of fifty years from the completion of said road, the legislature of this state may cause an appraisement of the said road and appendages thereof to be made by six persons, three of whom shall be appointed by the chief justice of this state for the time being, the remaining three by the company, who, or a majority of them shall report the value thereof to the legislature within one year from the time of their appraisement; or, if they cannot agree, they shall choose a seventh, who, with the aforesaid six, shall report as aforesaid; or, in case the said company shall neglect or refuse to appoint the said three persons on their part for two months after their said appointment by the said chief justice, then, the three persons so appointed by him shall proceed to make such appraisement, which shall be binding on said company; or, in case the said six commissioners shall be appointed as aforesaid, and they cannot agree upon the seventh man, then, upon two weeks' notice to the said company, the said chief justice shall appoint such seventh man, as aforesaid, to make such appraisement as aforesaid; and thereupon, the state shall have the privilege, for three years, of taking the said road, upon the payment to the company of the amount of the said report within one year after electing to take said road, which report shall be filed in the office of the secretary of this state; and the whole property and interest of said road and the appendages thereto, shall be vested in the state of New Jersey, upon the payment of the amount so reported to the said company; and that it shall be the duty of the president to lay before the legislature, under oath or affirmation, when they shall so request, a full and

fair statement of the costs of the said road, and of all the receipts and disbursements of the company; *provided always*, that the aforesaid valuation shall be made without reference to the receipts or disbursements of the company or advance of stock; and the valuation shall in no case exceed the first cost or valuation of said road with the appendages thereof.

16. *And be it enacted*, That if the said railroad shall not be completed at the expiration of ten years from the first day of July next, then, and in that case (except as to the part constructed), this act shall be void.

17. *And be it enacted*, That the governor, attorney-general, the chancellor, the justices of the supreme court, the judges of the court of errors of this state, and the state superintendent of public schools, when travelling for the purpose of discharging the duties of their offices, and the members of both houses of the legislature of this state, during its annual or other sessions, shall pass and repass over said railroad in the cars thereof, free of charge.

18. *And be it enacted*, That this act shall take effect immediately.

Approved March 29, 1865.

A SUPPLEMENT

TO AN ACT ENTITLED "AN ACT TO CHARTER THE PASSAIC VALLEY AND PEAPACK RAILROAD COMPANY," APPROVED MARCH TWENTY NINTH, EIGHTEEN HUNDRED AND SIXTY-FIVE.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That it shall and may be lawful for the Passaic Valley and Peapack Railroad Company to extend their proposed railroad to some point or points in the county of Hunterdon, between Milford and Frenchtown, in said county, and for that purpose, in its construction and completion, maintenance, use and enjoyment, all and every provision of the act entitled "An act to charter the Passaic

Valley and Peapack Railroad Company," shall extend and be applicable to the railroad now authorized to be constructed, in every respect as if the same had been originally authorized under the said act to which this is a supplement.

2. *And be it enacted*, That this act shall take effect immediately.

Approved February 7, 1867.

A SUPPLEMENT

To an act entitled "An act to charter the Passaic Valley and Peapack Railroad Company."

1. Be it enacted *by the Senate and General Assembly of the State of New Jersey*, That the Passaic Valley and Peapack Railroad Company may change, alter or improve the survey or location of said railroad, not to exceed three miles in any direction, from the present location, at any time before the completion thereof, upon filing a map of such survey or change of line in the office of the Secretary of State, the filing of which shall entitle the said company aforesaid to all the privileges and benefits in obtaining right of way and lands for other purposes are embraced in the act to charter said company, or the supplement thereto; but said change, alteration or improvement shall be in conformity to the provisions of said act and supplement thereto.

2. *And be it enacted*, That this act shall take effect immediately.

Approved April 9, 1868.

A SUPPLEMENT

To an Act entitled "An Act to charter the Passaic Valley and Peapack Railroad Company," approved March twenty-ninth, eighteen hundred and sixty-five, and its several supplements, approved

FEBRUARY SEVENTH, EIGHTEEN HUNDRED AND SIXTY-SEVEN, AND APRIL NINTH, EIGHTEEN HUNDRED AND SIXTY-EIGHT.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That the said Passaic Valley and Peapack Railroad Company shall have the *power* and is hereby authorized to *make its bonds*, and for the purpose of securing their payment, *to mortgage its real estate* and personal property, railway and all the appurtenances, franchises, powers and privileges and rights belonging thereto, which it may possess under its act of incorporation and this supplemental act, to such an amount as it may deem expedient, and to sell or negotiate the same at such a rate of interest or discount as it may deem for the best interest of the company without invalidation thereof, by virtue of any statute of this state, and said bonds and mortgages so sold or negotiated shall be valid and binding in law and in equity, and the purchaser and purchasers under a decree in equity or foreclosure founded upon any such bond and mortgage, shall be invested with all the estate, rights, franchises, powers and privileges which are or may be conferred upon or possessed by said company under or by virtue of its act of incorporation, and any supplements thereto, subject, nevertheless, to all the restrictions, conditions, and limitations contained therein.

2. *And be it enacted*, That the said Passaic Valley and Peapack Railroad Company may increase its capital stock to an amount not exceeding the cost of said railroad, its appurtenances and connecting line, and may connect with any other railroad now built, or hereafter to be built, and the right of way and all other rights and privileges necessary to construct and operate said connecting line, shall be obtained and subject to all the restrictions specified in the original charter of the Passaic Valley and Peapack Railroad Company; and such connecting railroad may guarantee the payment of the interest and principal of the bonds of the Passaic Valley and Peapack Railroad Company, as well as dividends upon stock.

3. *And be it enacted*, That the said company may have and hold real estate at its several stations and depots on the lines of the said railroad to a sufficient extent to provide accommodations and conveniences for the business of said railroad, and may erect and build thereon such depot houses and machine shops as may be expedient for the accommodation of passengers, safety of property, and other necessary uses.

4. *And be it enacted*, That until the said company shall pay the tax of one-half of one *per centum*, as required by its original act, they shall be regularly assessed and pay tax for the value of its real estate, including improvements thereon and personal property, as are now taxed in the city or cities, township or townships wherein it lies, at the same time and rate and in the same manner, for the same purposes, and by the same person or persons, as other taxes assessed in said city or cities, township or townships; *provided however*, that as soon as said company shall have completed five consecutive miles of said road, they shall pay tax to the state as required by the original act.

5. *And be it enacted*, That this act shall take effect immediately.

Approved March 16, 1869.

STATE OF NEW JERSEY.

[L. S.] I, HORACE N. CONGAR, Secretary of State of the State of New Jersey, do hereby certify, that the foregoing is a true copy of an Act passed by the Legislature of this State, and approved by the governor the sixteenth day of March, A. D., 1869, as taken from and compared with the original now on file in my office.

In testimony whereof, I have hereunto set my hand, and affixed my official seal, this twentieth day of March, eighteen hundred and sixty-nine.

(Signed) H. N. CONGAR.

AN ACT

To authorize the Passaic Valley and Peapack Railroad Company to build a Bridge across the Delaware River at their termini.

1. Be it enacted *by the Senate and General Assembly of the State of New Jersey*, That it shall be lawful for the Passaic Valley and Peapack Railroad Company, and they are hereby authorized, by and with the consent of the state of Pennsylvania, or in conjunction with any company, that has obtained, or that may obtain the consent of said state, to construct a railroad bridge or viaduct across the Delaware river at or near Milford, or at their termini, but not below the town of Milford, as authorized by their original charter and its supplements, to enable them to cross the said river with their locomotives, cars and trains, and to connect with any Pennsylvania railroad, which may be authorized to form a connection with them, which bridge shall be constructed in reference to the position and form of the piers, and the heighth of the bridge above the waters of said river, as to cause the least practicable obstruction to the navigation of said river, and the said company are also authorized to alter the location of their road so as to enable them to connect with such bridge, and to pass their locomotives, cars and trains over the same.

2. *And be it enacted*, That it shall be lawful for said Passaic Valley and Peapack Railroad Company to authorize and permit any other railroad or canal corporation of this state, to use the said bridge for the transportation of passengers or freight, upon or over it, and to make such connections by tracks, switches, turnouts or otherwise, as may be requisite to give them a free use of the said bridge, for the conveyance of passengers or freight to, upon or over said bridge, and to its connections on either side of the river Delaware, provided that the corporation or corporations using the said bridge shall pay to the Passaic Valley and Peapack Railroad Company, a sum not exceeding three cents per ton for each ton of merchandise or freight, and

five cents per passenger, for each passenger transported over said bridge.

3. *And be it enacted*, That this act shall take effect immediately.

Approved March 25, 1869.

A SUPPLEMENT

TO AN ACT ENTITLED "AN ACT TO CHARTER THE PASSAIC VALLEY AND PEAPACK RAILROAD COMPANY," APPROVED MARCH THE TWENTY-NINTH, EIGHTEEN HUNDRED AND SIXTY-FIVE, AND ITS SEVERAL SUPPLEMENTS.

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey*, That the limitation of one hundred feet in width of land as provided in the sixth section of the act to which this is a supplement, shall not apply in places where the nature of the ground requires a greater width for the slopes of cuts and embankments.

2. *And be it enacted*, That this act shall take effect immediately.

Approved March 31, 1869.

STATE OF PENNSYLVANIA.

AN ACT

AUTHORIZING "THE PASSAIC VALLEY AND PEAPACK RAILROAD COMPANY" TO BUILD A BRIDGE ACROSS THE DELAWARE RIVER AT THEIR TERMINUS.

WHEREAS, the Senate and General Assembly of the State of New Jersey, have passed an act approved by the Governor of said State, authorizing the Passaic Valley and Peapack Railroad Company, a corporation chartered under the laws of the State of New Jersey, to construct a railroad bridge or viaduct across the Delaware river at or near Milford, in the State of New Jersey, or at their western terminus;

AND WHEREAS, Before said act can go into effect, it is necessary that the consent of the State of Pennsylvania, through its constituted authorities, should be given thereto, and the said corporation empowered to purchase and hold as much real estate in the State of Pennsylvania as may be necessary to be used and occupied for the ascents and approaches to said bridge on the western side of the Delaware river; therefore,

1. BE IT ENACTED *by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and is hereby enacted by the authority of the same*, That the Passaic Valley and Peapack Railroad Company be, and they are hereby authorized to build and construct a railroad bridge or viaduct across the river Delaware at or near Milford, or at their western terminus (but not be-

low the town of Milford), to enable them to cross the said river with their locomotives, cars and trains, and to connect with any Pennsylvania railroad which may be authorized to form a connection with them, which bridge shall be constructed with reference to the position and form of the piers and height of the bridge above the waters of said river, as to cause the least practicable obstruction to the navigation of said river, and the said company are also authorized to purchase and hold such real estate in this state as may be necessary for the abutments, ascents and approaches to said bridge.

2. This act shall take effect immediately.

JOHN CLARK,
Speaker of the House of Representatives.

WILMER WORTHINGTON,
Speaker of the Senate.

Approved the tenth day of April, Anno Domini, one one thousand eight hundred and sixty-nine.

JOHN W. GEARY.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
HARRISBURG, April 10, A. D., 1869.

PENNSYLVANIA, *ss.*—I do hereby certify, that the foregoing and annexed is a full, true and correct copy of the [L. S.] original act of the General Assembly, entitled "An act authorizing the Passaic Valley and Peapack Railroad Company, to build a bridge across the Delaware river at their terminus," as the same remains on file in this office.

In testimony whereof I have hereunto set my hand, and caused the seal of the secretary's office to be affixed, the day and year above written.

(Signed,) ISAAC B. GARA,
Deputy Secretary of the Commonwealth.

STATE OF NEW JERSEY.

AN ACT

To Change the Name of the Passaic Valley and Peapack Railroad Company.

Sec. 1. Be it Enacted *by the Senate and General Assembly of the State of New Jersey*, That the name of the "Passaic Valley and Peapack Railroad Company," a corporation chartered by an act entitled "An act to Charter the Passaic Valley and Peapack Railroad Company," approved the twenty-ninth day of March, eighteen hundred and sixty-five, shall be and is hereby changed to, and the said corporation shall hereafter be known by the name of the "New Jersey West Line Railroad Company;" the company shall continue to be the same corporation as heretofore, and all the rights, powers, privileges and obligations of and pertaining to said corporation by virtue of any law of this State shall be and remain the same under and in the name in this section designated as the new name of said company as if the name of said company had not been changed.

Sec 2. *And be it enacted*, That any proceeding heretofore commenced relative to the taking of land by said company for their railroad may be continued by or against the company in the name by which the company has heretofore been known, or if the company shall prefer in the name by which the company is by the first section of this act hereafter to be known.

Sec. 3. *And be it enacted*, That in any proceedings hereto-

fore had or taken or hereafter to be had or taken under or by virtue of the act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," approved the ninth day of April, eighteen hundred and sixty-eight, the name by which the said company shall hereafter be designated shall be the name by which, by the first section of this act, said company is hereafter to be known, and all the provisions in said act, the title of which is recited in this section, shall hereafter be in force and apply to the said company by the name by which by the first section of this act said company is hereafter to be known.

SEC. 4. *And be it enacted*, That the bonds the company are authorized to issue and mortgages to secure bonds may be made in the name in this act designated as the name of said company, and any of the bonds of the company may be the terms thereof made, and may be convertible into stock of the company, and the company may increase the capital stock of the company in addition to the amount now authorized to an amount equal to the bonds convertible into stock which may be issued by said company.

SEC. 5. *And be it enacted*, That the five days notice of appeal mentioned in the seventh section of the act, the title of which is recited in the first section of this act, may be served on or before the first day of the term of the court next after the decision of the commissioners from which an appeal may be taken, and the petition to be filed on such appeal must be filed on or before Monday of the second week of said term, and the proceeding may be heard, tried and finally determined during the said term next after the decision of the commissioners.

SEC. 6. *And be it enacted*, That this act shall take effect immediately.

Approved February 15, 1870.

STATE OF NEW JERSEY.

I, HORACE N. CONGAR, Secretary of State of the [L. S.] State of New Jersey, do hereby certify that the foregoing is a true copy of an Act passed by the Legislature of this State, and approved by the Governor the fifteenth day of February, A. D., eighteen hundred and seventy, as taken from and compared with the original now on file in my office.

In testimony whereof, I have hereunto set my haud, and affixed my official seal, this nineteenth day of February, eighteen hundred and seventy.

H. N. CONGAR.

A FURTHER SUPPLEMENT

TO "AN ACT TO CHARTER THE PASSAIC VALLEY AND PEAPACK RAILROAD COMPANY," APPROVED MARCH TWENTY-NINTH, EIGHTEEN HUNDRED AND SIXTY-FIVE.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That in case of an appeal heretofore or hereafter taken to the inferior court of common pleas of the county in which land taken for the said company's railroad lies, from the decision and award of the commissioners appointed by virtue of the seventh section of the act to which this is a supplement, to assess the price or value of land taken or to be taken by said railroad company, which company is now known by the name of "The New Jersey West Line Railroad Company," or in case any owner or owners of such land shall, before an appeal is taken, be unwilling or refuse to receive the amount of the award and decision of said commissioners or of a majority of them, it shall and may be lawful for the said railroad company to pay into the said inferior court of common pleas, or to the clerk thereof, the amount of the award of said commissioners or a majority of them; and after the said payment into said court, or to said clerk, it shall be lawful for said railroad company, im-

mediately to enter into possession of the said land, the price or value of which has been or shall be assessed by the commissioners, and construct thereon their railroad and whatever may appertain thereto.

2. *And be it enacted*, That the sum so paid into the said inferior court of common pleas, or to the clerk thereof, shall in case of an appeal heretofore or hereafter taken, to be held until final judgment rendered on said appeal; or in case no appeal is taken until the time limited by law for taking an appeal expires, when as the case may be, the said amount, or so much thereof as shall be necessary, should the jury on appeal find a less sum, shall be paid by the order of the court to the owner or owners of said land entitled thereto.

3. *And be it enacted*, That upon the payment of said money into the said inferior court of common pleas, or to the clerk thereof, if the jury on appeal should not find a greater sum than the said commissioners; or in case they do find a greater sum, upon the payment of the excess, including costs, over what has been paid into said court or to said clerk, to the person or persons entitled thereto, or into said court, or the clerk thereof, or in case of the payment of the amount of any award into the court of chancery or to the clerk thereof, pursuant to the eighth section of the act to which this is a supplement, the said corporation shall thereupon be deemed to be seized and possessed in fee simple of all such lands and real estate appraised.

4. *And be it enacted*, That this act shall take effect immediately.

Approved March 14, 1870.

STATE OF NEW JERSEY.

[L. S.] I, HORACE N. CONGAR, Secretary of State of the State of New Jersey, do hereby certify, that the foregoing is a true copy of an act passed by the Legislature of this State, and approved by the Governor the fourteenth day of March, A. D. eighteen hundred and

seventy, as taken from and compared with the original now on file in my office.

In testimony whereof, I have hereunto set my hand, and affixed my official seal, this twenty-fourth day of March, eighteen hundred and seventy.

H. N. CONGAR.

[An act entitled "An act to authorize certain towns in the counties of Somerset, Morris, Essex and Union to issue bonds and take stock in the Passaic Valley and Peapack Railroad Company," will be found on pages 2 to 7 of Brief for Appellants, Cases Nos. 96 and 97, October Term, 1883, of Supreme Court of United States.]